John Davison Lawson

American State Trials

Volume 1

AMERICAN STATE TRIALS

A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to the Present Day.

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.
EDITOR

VOLUME I

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TO

WILLIAM KEENEY BIXBY, LL.D.

OF ST. LOUIS, MISSOURI.

CAPTAIN OF INDUSTRY, PATRON OF ARTS AND LETTERS, TO WHOSE GENEROUS FOUNDATION OF A LIBRARY OF CRIMINAL LAW AND CRIMINOLOGY THIS WORK HAS BEEN MADE POSSIBLE, THE INITIAL VOLUME OF THE SERIES IS RESPECTFULLY DEDICATED.

INTRODUCTION

In most of the States of the Union from a very early day the proceedings of the Courts of Appeal have been reported with great fullness and accuracy. At first this came from private enterprise, but within the last quarter of a century nearly all the States have themselves taken up the publication of these decisions. But from the beginning the proceedings at the trial have been neglected, and because the trial takes place in the inferior courts very little is preserved of the case except what goes to the Appellate Courts which tribunals devote themselves almost entirely to the consideration of questions of law. The State itself has in no instance published its trials, either civil or criminal, and the only reports of these cases are the work of private persons who have occasionally in pamphlet form given to the public the proceedings, the evidence, and the speeches of counsel. Volumes of new reports of appellate decisions are being annually poured out by all of our States with such rapidity that few lawyers can find leisure to read a hundredth or means to buy a tenth of them. But they are exclusively for the Bar and deal only with questions of law and the technical working of the case and little is to be found in them to interest the general reader or to commend them to the great body of the people. And the labors of private law publishers have been bestowed entirely upon law reports, treatises, digests and commentaries, the circulation of

which is limited to the professional reader. No effort has been taken to preserve in a permanent form a faithful and accurate record of the proceedings at the trial before the Court and the jury.

To supply this deficiency in American legal reporting this series has been undertaken and will be continued until all the important criminal trials which have taken place in the United States from the first settlement of the country to the present time and of which it is possible to obtain a correct and accurate report have been presented to the profession and the public. The object of the Editor and Publishers of this important undertaking is to make it a complete record of American State Trials, to be contained in twenty volumes.

Judicial investigations with a view of discovery and punishment of crime, as they involve the highest interests of society, always excite an attention commensurate with their importance, wherever they are publicly and openly conducted as they are in this country, in England and in some of the European States. They exhibit human nature in an infinite variety of positions, and show man as he is. Events and transactions, more wonderful than anything to be found in works of fiction become realities in the proceedings of criminal tribunals. A criminal trial is a drama of the highest interest and usually crowds the court room in which it is held. Reports of criminal trials which occasionally appear in the newspapers are read with eagerness by the public. It is doubtless more thrilling to see the actual trial than to read about it in a newspaper or book, nevertheless great trials excite the curiosity and are valuable long after the scenes they profess to describe have passed from the memory of the spectator. And it is possible to supplement the report of the trial and illustrate it

by surrounding facts of which the spectator even would be ignorant.

The "American State Trials" will be a welcome addition to the library of every lawyer and judge for the reason that it will duplicate nothing that is on his shelves and that it will never get out of date. The value of this series to him will be first in the principles of law laid down by the judge in the particular case and the rulings on evidence and procedure. Then the arguments of counsel and the orations of the advocate for the prisoner and for the State will give him a mine of eloquence from which to gather material for his own use. Then the investigation of facts is always more interesting and often more important than the investigation of abstract principles, and the Bar is required to do quite as much of the former as of the latter. Our most distinguished advocates have earned their highest honors by their addresses to the jury.

But to others besides the judge and lawyer this work will have an almost equal value. The writer and the reader of history will find here abundant material for study and investigation. Just as in the "State Trials" of England the English historian has found a never failing source of material in writing the history of his country, so the American historian of the future will find in this series a record of the lives, the customs and manners of the American people which has hitherto been closed to him.

The sociologist and the criminologist will likewise find opened before him new phases of human life. Burke long ago spoke of a criminal trial as "exhibiting human nature in a variety of positions, at once most striking, interesting and affecting." The scientific investigator will note the contrast between the manners and customs of the people and the public

opinion of the time in the days when witches were burned at the stake, and in the days when a woman can scarcely anywhere be convicted of a homicide even of the grossest character; in the days when a minister of the gospel was indicted and tried for saying in a sermon that slavery is contrary to the Bible and in the days when a contractor is tried for preventing a negro from breaking his contract and leaving his service; in the days when men were hanged for burning a house and the days when the same crime involves no greater punishment than to be, after conviction, paroled on good behavior. There is no better way for one who wishes to familiarize himself with the habits and customs of a particular epoch in the history of his country than to familiarize himself with the judicial trials of the time and place.

Lastly to the general public this series will certainly appeal as the most interesting and instructive work which has been published in this country for many years. The trial of judicial causes has even more charms than biography and history, for it is a drama of real life. We enter the halls of justice, the judges and jurors are before us, the criminal is brought in, we behold him surrounded by an eager and excited populace; the whole scene passing before the mind's eye as a living and moving picture. There is nothing in the Grecian drama that surpasses, in touching pathos, scenes in the trials and prosecutions of these men and women, sometimes innocent and sometimes guilty, but always awaiting with trembling the verdict of the jury which is to send them back to their families and friends or to the scaffold or prison. Here are the poor and ignorant confronted with their accusers but relying upon their advocates; there the rich and powerful surrounded by a host of counsel and braving even the power of the government to con-

vict them. Sometimes the mere report of the evidence in the case and the verdict gives a complete picture of the crime and criminal, but in most cases the full dramatic effect cannot be shown in a narrative, but stands out broadly and as vividly as the actual trial when the witnesses, the counsel, the judge and the prisoner are suffered to speak for themselves. In many cases the great points of interest are the eloquent arguments at the bar by the advocates, and in this collection will be included all the great forensic efforts which have been made in trials in all the States by the orators and leaders of the American Bar from the beginning of American Courts down to the present time. When it is considered how prone our people are to litigation, what a vast number of causes are decided every year, how eagerly the public attention is directed to many of them, what an amount of learning and talent are centered in the legal profession, greater perhaps than in any other, how fond American people are of attending courts, and especially the magnitude of many causes that are tried, it is extraordinary that there should not have appeared up to this time in the country a series of American State Trials.

In England this field has not been neglected. It is covered by that great work, "Howell's State Trials," which begins the historical trials of England with the Trial of Sir Walter Raleigh for High Treason in the Great Hall at Winchester in the first year of James I (1603) and ends with the trial of the Cato Street Conspirators in the first year of George IV (1820) in thirty-three volumes. And this series is continued in the "State Trials" (New Series) begun in 1830 and published under the direction of the government by the State Trials Committee. France, too, in its great collection, "Causes Celebres" has preserved this part

of its history as the English nation has done. But in the United States, as has been pointed out, there being no official reports of criminal trials, the profession and the public have known nothing of them except where the case had a local or national interest and the newspaper of the particular town or city or the press generally reported the proceedings. Sometimes where the trial had gained wide attention private persons reported in pamphlet form the proceedings, and to collect these fugitive pamphlets has been the work of the Editor for many years. Most of them have become very rare and are to be obtained with great difficulty. It is a matter of surprise that there is no American publication entitled to take its place with the "State Trials" of England and the "Causes Celebres" of France. To fill this want the Editor after years of preparation, investigation and research presents the first volume of this series which is to be known as "The American State Trials."

Such a work, of course, is possible only after years of investigation, research and study. For nearly a decade the Editor has been engaged in the collection of works upon criminal law and criminology in all of its phases, one branch of which is the report of criminal trials. He has in this time been able to gather together one of the largest collections in this particular field to be found in the United States and which is constantly increasing in size and value. This special library was made possible through the generosity of its founder, William Keeney Bixby, will be known as the Lawson Library of Criminal Law and Criminology and will become the property of the Law School of the University of Missouri.

The material for this collection of "American State Trials" comes from the following sources:

First: The pamphlet reports of cases which in their day excited great interest and which were issued by private individuals, purchased at the time by an interested public, but soon after mislaid, lost or destroyed. Occasional copies of these get into second-hand book stores and are eagerly seized by collectors. The Lawson Library is particularly rich in these pamphlets. The only other two libraries in the country which can compare with it in this respect are the Harvard Law School Library and the Congressional Library at Washington.

Second: The newspaper reports of the time. Until a few years ago many of the American newspapers gave very accurate and lengthy accounts of the notable current trials where the public interest was great. This is still done in England, but seems to have disappeared from American journalism whose custom at the present day is to pick out only the sensational points in a trial and leave out everything else.

Third: The records of the trial, and the evidence and briefs which are found either in the Circuit or Appellate Courts. The Library possesses already many copies of these records which have hitherto been unpublished and inaccessible to the profession and the public, and it will continue to gather them until it shall embrace a complete collection of the great trials of America in both the State and Federal Courts. The books and pamphlets contained in the Lawson Library when referred to in this work are marked with a star*.

The series will contain not only cases before the ordinary courts of justice, but proceedings before courts martial, legislative bodies sitting as Courts of Impeachment and Ecclesiastical Tribunals. And it will include also trials where breaches of the law are

in issue, though the State is not an actual party, as for example actions for divorce, for assault and battery, for libel and slander and the like.

It has not been thought desirable to print the trials in chronological order as reports of new cases are constantly coming to light. A table of cases in the order of their dates will however accompany the last volume of the series.

The editor [1] requests the co-operation of members of the bar who may have taken part in criminal trials of importance and interest, or who are in possession of reports of any trials which have not been discov-

[1] LAWSON, John Davison, LL.D., born Hamilton, Ont., 1852, B. A. L., Osgoode Hall, (Ont.,) 1875. Admitted to bar (Missouri), 1876. Practiced law (St. Louis) (Thompson & Lawson), 1876-1885. Director St. Louis Law Library Association, 1881-1885. Editor *Central Law Journal,* 1876-1881. Judge Civil Court, 1886-1891. Professor of Contract and International Law, University of Missouri, 1891-1904. Dean Law School, University of Missouri, 1904-1912. President Missouri Bar Association, 1904. Member Missouri Council and Committee on Penal Laws and Prison Discipline, American Bar Association, 1895-1904. Chairman Section History of Law, Universal Congress of Arts and Science, St. Louis, 1904. Diploma and Medal Louisiana Purchase Exposition, 1904. Member Special Committee on Reform in Legal Procedure, American Bar Association, 1908-1913. Member of General Council, American Bar Association, 1909. Member International Law Association, 1907-1913. Vice President International Law Association. Member American Society of International Law, 1907-1913. Editor *American Law Review.* Commissioner from Missouri to National Conference on Uniform State Laws. Vice President and Chairman Committee on Reform in Criminal Procedure, American Institute of Criminal Law and Criminology. Associate Editor *Journal of Criminal Law and Criminology.* Special Commissioner from American Institute of Criminal Law and Criminology to investigate administration of Criminal Law in Great Britain, 1909-1910. Contributor to Journals of Law and Jurisprudence, and author of the following works: Contracts of Common Carriers, 1880; Usages and Customs, 1881; Concordance of Words and Phrases, 1883; Expert and Opinion Evidence, 1883, second edition, 1900; Principles of Equity, 1884; Leading Cases Simplified (3 vols.), 1882; Presumptive Evidence, 1885, second edition, 1899; Insanity as a Defense, 1884; Defense to Crime (5 vols.), 1886, 1892; Rights, Remedies and Practice (7 vols.), 1891; American Law of Bailments, 1895; American Law of Contracts, 1893, second edition, 1904; Cases on Personal Property, 1896; Cases on Quasi-Contracts, 1904.

ered by him or are not at present in his library. His object being to make this collection as complete as possible, he will be grateful to any one who will give him information on the subject. Even a partial report of a case or the speeches of counsel would often be available and would be much appreciated.

J. D. L.

University of Missouri,
Columbia, Mo.

PREFACE TO VOLUME ONE

Every trial in this volume has some novel and interesting features of interest to the layman as well as to the lawyer.

The mystery of the death of Elma Sands (*Weeks Case, p. 1*) has never been solved, though it long ago was the subject of a popular work of fiction, and within a year or two has been discussed again in one of the best known magazines of the day, and the curious myth of the cause of the acquittal of the accused,—the candle incident (*p. 34*), explained by Senator Lodge of Massachusetts. But outside of this the fact that side by side in that trial in the New York City court-house on those spring days in the first year of the nineteenth century, Alexander Hamilton and Aaron Burr worked side by side to accomplish the same end—the freedom of their client—will forever render this case an historical *cause célèbre*. For only four years later they were to face each other as enemies on the New Jersey shore in sight of this very court-room and the one was to die at the hands of the other.

In the New England States a century ago, in the days when the American flag was seen in every port of the world, an attack on maritime property was as great an offense as was horse-stealing half a century later in the West. *Tulley* (*p. 41*) may have been guilty of murder and even had he been convicted (which is doubtful), he would hardly have been hanged. But Piracy, stealing a vessel on the high seas—this was the unpardonable sin of the time and place. The ship-owners and merchants of Massachusetts, Maine, Connecticut and New

Hampshire were getting wealthy through their foreign commerce, and what would come of us, they said, if people were allowed with impunity to run away with our ships? And this commercial view is well reflected in the address of Mr. Justice Story when delivering his sentence of death. Story was a Massachusetts man, born in a seaport town, and a great admiralty lawyer, and so he told the prisoners that what they had done (viz., stealing a vessel so small as to require only five seamen, and carrying fourteen casks of wine and twenty-five hundred dollars in money, which later was recovered by the owner) was a willful, malicious and deliberate crime of the most odious nature, one which among all countries and nations was esteemed an offense which placed its perpetrators in enmity with the whole world, which banished them from the hospitality and the protection of society and consigned them to an ignominious death (*p. 55*). And again, when the prisoners came to the scaffold, the Marshal thought it fitting to invent a new torture for one of them (*p. 59*).

The case of *Mezzara* (*p. 60*) is amusing, as libel prosecutions generally are, and the French artist's defense that he was painting a mythological story and not a satire on a member of the bar was very properly not given much weight by the Jury.

The trial of the *Reverend Jacob Gruber* (*p. 69*) takes us back to the days of slavery discussion long before 1860. One is surprised that it began so early and was so vehement more than fifty years before Sumter was fired upon. The case, however, has its highest interest in the new light it throws upon the life and opinions of Roger B. Taney, for we have here his views of negro slavery and his opinions on the vexed question,—a Southern man and slaveowner speaking to a jury of Southern men and slaveowners.

"A hard necessity indeed compels us to endure the evil of slavery for a time. It was imposed upon us by another nation, while we were yet in a state of colonial vassalage. It cannot be easily or suddenly removed. Yet while it continues, it is a blot on our national character, and every real lover of freedom, confidently hopes that it will be effectually, though it must be gradually wiped away; and earnestly looks for the means by which this necessary object may be best obtained. And until it shall be accomplished: until the time shall come when we can point without a blush, to the language held in the Declaration of Independence, every friend of humanity will seek to lighten the galling chain of slavery and better to the utmost of his power, the wretched condition of the slave." (*p. 88.*)

Forty years later when, as Chief Justice of the United States, he decided in the Dred Scott Case that the framers of the United States Constitution did not intend to include negroes in the term "citizen" as used in that instrument, he was denounced by the Abolition party with a bitterness and hate almost unparalleled in the history of political discussion. But Taney was right in his law, as nearly everyone now admits. And that his real sympathy for the black man was equal to that of Garrison or Phillips appears very clearly.

A very curious trial for murder is that of *Bowen* (*p. 107*). His guilt seems clear, so far as the law, as laid down by Chief Justice Parker, is concerned, but the Jury could not quite understand it and hence acquitted the accused, as Juries generally do when their minds are unable to grasp the subtleties of legal reasoning.

The trial of *Ury* (*p. 114*) gives not only a good view of the insane fever which sometimes seizes a whole community, as it did again in the Prosecution of the *Massachusetts Witches* (*p. 514*), but likewise a most trustworthy example of how Protestant intolerance succeeded a long period of Roman Catholic bigotry. The prisoner was a victim of the current hatred of everything which smacked of the Pope. The lawyer will note the kind of evidence which was admissible in the Courts of New York a hundred and seventy years

ago, and which recalls Mr. Chief Justice Jeffreys and the Bloody Assize.

The most famous case in this volume is that of *Judge Wilkinson* and his two friends (*p. 132*) indicted for and acquitted of the murder of two Kentuckians in a bar-room fight. The accused were fortunate in having for their counsel, their friend and fellow citizen Sergeant S. Prentiss, than whom a more eloquent and successful advocate the history of Criminal trials in the United States does not present. They had other lawyers, eight in all. In any other company the speech of Colonel Robertson (*p. 173*) would take high rank and there was also in that galaxy of advocates, John Rowan and Benjamin Hardin, who represented in the Kentucky bar of the day what Prentiss did in that of Mississippi. The address of Rowan (*p. 282*) was remarkably effective. Attention is called to his attack on Private Prosecutors (*p. 290*); his defense of the general custom of that day in that part of the United States of carrying pistols and bowie knives (*pp. 303, 320, 342*); his argument (to a slaveholding jury) that as the cowhide was the instrument used to correct slaves, a stroke on the back of a freeman was worse than a pistol bullet and could be avenged only by the death of the aggressor (*p. 346*), and finally his vindication of the duel, at that time the subject of hostile legislation in the Southern States, and fast disappearing.

"Sirs the duel was in the times I speak of and had been for ages throughout the civilized world, not only the most effectual polisher of manners and morals, but a most efficient, though sad, peacemaker. It held all who aspired to be gentlemen, and were of course amenable to its tribunal, under a strong recognizance for their good behavior. It is a tribunal instituted by nature, as an auxiliary, to the political institutions of society. It was a misdirected humanity which influenced Kentucky and the States of the Union who, following her example, have attempted to suppress it. The object was to prevent the effusion of blood. The effect has been to increase it tenfold." (*p. 323.*)

The speech of Hardin—the private counsel for the families of the victims (*p. 249*), for the public prosecutor seems to have been influenced by the popular opinion which favored the accused,—is well worth a careful reading and is a most courageous and forcible arraignment of the three men charged with the homicide, surrounded and sustained as they were by the chivalry and beauty of the State of Kentucky. But even in this concourse of orators Prentiss was easily the star. His winning manner with the Jury (*p. 186*), his eulogy of his friends the prisoners (*p. 188*), his sarcastic criticisms of the witnesses for the State (*pp. 192-210*), his denunciation of Redding the tailor (*p. 223*), and his vindication of the right of self-defense (*p. 220*) were as effective as they were masterly.

The ruling of the Court (*Wittenburgh Case, p. 361*) that the keeper of an employment office is engaged in a public calling like a common carrier or an innkeeper, reminds us that at one time in the history of our law, a blacksmith, a tailor and a physician and surgeon fell within the same category. In the twentieth century these three have been long dropped from this class of public servants (and the employment agency as well we imagine) and their places have been filled by the telegraph and telephone companies, the elevator and the water and light corporations of our modern society.

The sinking of the *William Brown* sailing vessel in the year 1842 (*Holmes Case, p. 368*) was repeated sixty years later in the loss of the *Titanic,* in nearly every detail. True, the *William Brown* was not much over five hundred tons; the *Titanic* was nearly fifty thousand; and the former had no wireless telegraph to summon assistance from every point of the compass. But both struck an iceberg at about the same place; both went to the bottom in about the same time; both were short of

life boats in about the same proportion and in both cases the passengers and crew who filled the boats had to listen to the dying cries of the victims who went down with the ship. In the case of the *Titanic,* however, women were given the preference in filling the life boats, while in the case of the *William Brown* no distinction was made between men and women either in filling the boats or in throwing over the occupants when they were subsequently found to be overcrowded. And the captain of the *Titanic* went down with his ship, while the captain of the *William Brown* got into the first boat launched and was saved. The American and English press, after the loss of the *Titanic,* treated the saving of so large a proportion of the female passengers and the death of the captain as the result of the custom of the sea. But a custom is the result of a long continued and uniform practice, and that no such practice existed on the high seas in the year 1842 is plain from the evidence given on this trial.

In what part of the United States would a man be hanged to-day because he set fire to an old ramshackle tenement house in order that the carpenter's trade should benefit, where the only loss was a building which our municipal authorities would have long before condemned as a nuisance? Yet this was the fate of *Crockett* (*p. 440*) and his companion Russel, in the good city of Boston in the year of our Lord, one thousand eight hundred and thirty-five.

Though not as notorious a case because the parties were not as prominent, the trial of *Colt* (*p. 440*) for the murder of Adams is on all fours in motive as well as in result with the celebrated trial of Professor Webster of Harvard University for the murder of Dr. Parkman (3 American State Trials). Both of the murderers were debtors, pursued by harassing creditors; both as-

saulted their victims in a passion without intending their deaths, and both instead of making a quick confession of their acts, determined to conceal the crime by making away with the bodies of their victims. Both bodies were subsequently discovered and both men were subsequently convicted, and one was hanged and the other killed himself on the day set for his execution. That a verdict of manslaughter instead of murder and an imprisonment for a short time would have been all that they would have received had they not had recourse to falsehood and finesse, will be the opinion of anyone who reads the evidence in both cases. The trials are good illustrations of the soundness of the maxim: "Honesty is the best policy."

Such an extraordinary conspiracy as that of the young midshipman, Philip Spencer, puts the case of *Commander MacKenzie* (*p. 531*) in a class by itself in the annals of the American Navy and the prompt and condign punishment inflicted by the Commander will stamp him forever as a man whose sense of duty was not to be influenced in the smallest degree by fear, favor or affection. What naval officer to-day would in time of peace, after a trial by a court selected by himself and without a chance of an appeal to a revising court or to the Executive, send to a disgraceful death a son of a member of the Cabinet and a close friend and adviser of the President of the United States? The stern old Commander had as poor an opinion of the American Courts as the public has to-day. "Of what avail," says he, "would it be to take a young man of Spencer's social, political and financial influence home for trial, where a man with money and influential friends will always be cleared?" Why it is that in a Democracy like ours there is one law for the rich and another for the poor while in a monarchical country,

such as England, no one is too high to escape the penalties of the law or too low to lose its protection. Is it because the maxim *noblesse oblige* has never with us been taken seriously?

The railway conductor in *Caldwell's Case* (*p. 614*) has doubtless had numerous successors. Here we see almost the beginnings of that private detective agency which later was to become a familiar name in every part of the United States.

It is often said that journalism has deteriorated since the days of Greeley and Raymond, at which time the yellow press is supposed to have been unknown, but *Noah* (*p. 671*) was not above making public a private letter which he became possessed of by accident or design (it is not easy to say which) a piece of enterprise quite in the line of some of our modern journals. It is interesting to note that several of the same men served on the second jury which was to try his political opponent *Spooner* for libel (*p. 685*), a practice very common in other countries but utterly opposed to modern American Criminal procedure. And when both the antagonists are hailed before the Court for contempt (*Noah and Spooner, p. 674*) we find the judge just as much afraid to send two powerful editors to jail as our judges would be to-day.

The case of *Vallandigham* (*p. 699*) recalls those dark days of the Civil War which tried men's souls; the cause of the Federal Government at its lowest point and Lincoln almost deserted and abandoned by the multitude. But how quickly a victory or two of the military arm turned the tide and rallied the whole North to the support of the great Leader to the complete discomfiture of the Southern sympathizers.

Simons' Case (*p. 717*) shows that the race question nearly a century ago was a live one, and that except on

its political side, it has always been a national and not a sectional one.

Among the crimes of passion which our criminal records present that of *Clough* (*p. 723*) has no redeeming feature. Of course his lawyers endeavored to have him declared irresponsible by the jury which tried him but the "insanity dodge" has never worked well in New Jersey.

Smith's Case (*p. 779*) presents the just indignation of a judge at the too common action of our juries in refusing to punish a crime through sympathy and sentiment.

Trumbull v. Gibbons (*p. 789*) is the first case in the volume in which the trial is on the civil side of the court, but the libel was certainly a criminal one, and the jury in giving the plaintiff a money verdict of fifteen thousand dollars,—a large sum one hundred years ago,—certainly intended to punish the defendant as well as vindicate the plaintiff.

The Trials of the *Quakers* (*p. 813*) must be read with those of the Massachusetts Witches (*p. 514*), and the Minister *John Ury* (*p. 114*). The record is hardly one to be proud of. Our American forefathers, although they sought refuge on this continent against tyranny, and for more freedom of conscience, did not very long live up to their ideal, but very soon became even more intolerant than the rulers they had left behind them.

Lastly the gruesome tragedy in *Blake's Case* (*p. 825*), shows us that a century ago the housing problem in our largest city was as much a problem as it is today and that people were herded together in our metropolis as they were in the old towns in Europe from which they had come. Yet there were open to them, and as free almost as the air, millions of acres of the public lands of this continent.

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THE TRIAL OF LEVI WEEKS FOR THE MURDER OF GULIELMA SANDS, NEW YORK CITY, 1800.

THE NARRATIVE

Elias and Catherine Ring, Quakers, lived in Greenwich Street, near Franklin Street, New York City. Their family consisted of Hope Sands, Mrs. Ring's sister; Gulielma (Elma) Sands, her cousin; two young men, Russel and Lacey, boarders; Levi Weeks and his apprentice, also boarders; and some other boarders. Weeks was a brother of Ezra Weeks, a respectable and wealthy citizen, who was originally a carpenter. Weeks was very intimate with Gulielma—called Elma by the witnesses—and she had confidentially informed Mrs. Ring and Hope Sands that she and Weeks were to be privately married. On the evening of Sunday, December 22, 1799, Elma left the house about eight o'clock for the purpose, as the two other women understood, of being married; but she never returned. Two days later, on the 24th of December, a muff which she carried was found by a boy in the Manhattan Well,[1] which was situated in Lispenard's Meadow at a point now reached by an alley running from Greene Street and not far from Spring street. Curiously enough, this clew was not followed with any energy until a week later, when the body was recovered, on January 2, 1800. There were marks indicating that the unfortunate girl might have received rough treatment, but the tears in the dress and the bruises and abrasions were not of a conclusive character. The distance from Ring's house to the well was about half a mile. The body was taken from the well to the Ring house and was there laid out for some three days, and on one day was exposed to public view in the street, when crowds came

[1] Andrew Blanck's testimony, p. 25.

for the purpose of looking at it.[2] On January 6, the Grand Jury brought in a verdict of "Murder by a person or persons unknown," and four days later indicted Levi Weeks, a young builder and carpenter of excellent character and standing, as the murderer.

The trial began on March 31, 1800, in the old City Hall at the corner of Wall and Nassau streets, afterwards the site of the sub-treasury. The Court was composed of Chief Justice Lansing, Richard Varick, the Mayor and Richard Harrison, the Recorder of New York. The prosecuting officer was Cadwallader Colden, Assistant Attorney General. But probably no other person tried for a felony at any time or in any part of the country has had such eminent counsel as Weeks had. They were Brockholst Livingston, afterwards a Judge of the Supreme Court of the United States, Alexander Hamilton and Aaron Burr.

Mrs. Ring and her sister testified to Elma leaving the house in the evening, they thought with Weeks, though neither of them was positive of this; that she was in good spirits when she left; that Levi returned about ten o'clock looking pale and much agitated, and that when asked the next day he denied that he knew anything about her. There was evidence that a sleigh with two men and a woman in it was seen near Manhattan Well on the night of December 22d. Several witnesses were called, whose testimony went to show the probability of Levi's having used his brother's sleigh on the evening of the 22d; others stated the hearing of cries of "murder," in a female voice, near the well, about nine o'clock but nothing very precise or satisfactory was established on those points. The medical testimony was to the effect that the marks on the body of the woman might have been produced by violent means. For the defense the good character of Levi was shown by a number of witnesses and there was strong evidence of an alibi; that Weeks could not have been at the well at the time the girl must have been thrown or jumped in. And there was evidence that Elma was pregnant

[2] Joseph Watkins, p. 33. Dr. Hosack, p. 27.

and that she had declared more than once that she would kill herself. The evidence closed at half past two in the morning; and the Court having refused an adjournment, the counsel on both sides declined to address the jury and the Chief Justice having charged strongly in favor of the prisoner, the jury returned to the court in five minutes with a verdict of "Not Guilty."

It is safe to say that up to that period no crime had ever produced in New York such an excitement as the murder of Miss Sands. For many years afterward it was a never ending topic of conversation, and it is more or less talked of even to this day. Theodore Fay's novel, "Norman Leslie," published originally about the year 1833, and afterward republished, embodies several of the incidents of the story under fictitious names. The public was not satisfied with the result. Weeks found himself proscribed and soon after disappeared from New York. One writer describes the crime as a terrible tragedy and the trial as almost a farce, and criticises the Chief Justice very strongly for having practically taken the case from the jury and directed an acquittal,[3] while another and later writer says: "To anyone who reads the report it is obvious that no other verdict was possible. The prosecution failed to show that Weeks had gone out with Elma Sands on the 22d of December, and the defense proved an alibi for Weeks on that evening so complete as to put any participation in the murder on his part practically beyond the bounds of possibility."[4]

Three actors in this interesting drama known to New Yorkers as the Manhattan Well Murder within a few years suffered an unkind fate. Alexander Hamilton was killed in a duel with Aaron Burr, his associate counsel. The act drove Burr from his native land and he became an exile for many years. And thirty years after the trial Chief Justice Lansing left his hotel in New York for the Albany steamboat and was

[3] The Manhattan Well Murder, Edward S. Gould, *Harper's Magazine*, May, 1872.

[4] An American Myth, Henry Cabot Lodge, *The Outlook*, Aug. 26, 1911.

never afterwards heard of. The trial is also remarkable as having produced a curious historical myth which it took nearly a century to explode.[5]

THE TRIAL[6]

In the Court of Oyer and Terminer, New York City. March, 1800.

Hon. Chief Justice LANSING,[7]
Hon. RICHARD VARICK, *Mayor*,[8]
Hon. RICHARD HARRISON, *Recorder*.[9]
} JUDGES.

Cadwallader D. Colden,[10] Assistant Attorney-General, for the People.

[5] See page 34.

[6] *Bibliography.* "Report of the trial of Levi Weeks on an indictment for the murder of Gulielma Sands on Monday the thirty-first day of March and Tuesday the first day of April, 1800. Taken in shorthand by the Clerk of the Court. New York: Printed by John Freeman and sold at his Blank Stamp and Stationery Shop opposite the City Hall, 1800." This is without doubt the best report of the case. William Coleman (1766–1829), the reporter, does not place his name on the title page, but signs the preface.

Alexander Hamilton took down the testimony on the trial and the manuscript, on fifty-four closely written pages, was in existence forty years ago and is probably still preserved. See *Harper's Magazine,* May, 1872, page 925. From this manuscript Coleman's report was largely made. For they were close friends.

In 1801 Coleman was selected by Hamilton and other party leaders to conduct a new Federalist daily in New York City, and was its sole editor for twenty years.

In 1804 he published * "A Collection of the Facts and Documents relative to the Death of Major-General Alexander Hamilton, with comments; together with the various Orations, Sermons and Eulogies that have been published or written on his Life and Character. By the Editor of the *Evening Post* (William Coleman). 8vo., pp. 238." In his preface the author states: "In the death of Hamilton I have lost my best earthly friend, my ablest advisor, and my most generous and disinterested friend. And all that is now left me is to pour forth my gratitude in unavailing sorrow and to evince my regard for his memory by defending it against the cruel attacks of those, who, not content with having deprived him of his life, seem bent on pursuing him beyond the grave, and destroying his fame." This is the fullest and most accurate contemporary account of the famous duel, as well as the events and correspondence which led up to it. It is

now very rare. Coleman was for a short time a partner of Burr and a Reporter of the Supreme Court of New York.

In the preface to his report of the trial Coleman says: "I cannot help noticing two pamphlets which have already appeared, both pretending to exhibit a correct report of this trial. The first is published by one Longworth, and was in print a few hours after the trial was over. This man has seized with avidity upon the moment, when public curiosity was alive, and if we may credit his own avowal without regard to anything but remuneration, he has published just such an account as might naturally be expected from a man acting from such motives. I should not have descended to notice this paltry performance here, had he not put it off by the insinuation of a falsehood. It has been trumpeted around the streets as 'The whole Trial of Levi Weeks, taken in short hand by a gentleman of the bar.' Although he may feel a present gratification from the success with which the artifice has been attended, yet it is hoped he will find, in the end, that the public will not easily forget so gross an imposition. The other appears under the name of James Hardie, and is fairly suffered to find its sale in Booksellers' shops, without the aid of imposture. But in his statement of the testimony he has involved some of the witnesses in positive and material contradictions, where in reality there were none. This may be accounted for from the unfavorable situation in which he sat to take his notes, as well as from some other circumstances not irreconcilable with the most innocent intentions; but surely a conscientious man cannot but feel some degree of uneasiness, that he has done a thing in the face of the public —at once, so injurious to truth, and to the individual who is affected by it. These remarks are made with some reluctance upon a man, who I am told, has a considerable share of literary merits." Coleman's report is very scarce. There are two copies in the Congressional Library, both imperfect, lacking several pages, and one copy in the Harvard Law School Library. Longworth's and Hardie's Reports are not to be found in any library catalogue.

[7] LANSING, John (1754–1829). A member of the New York Assembly and afterwards of Congress. Speaker of the New York Assembly. Mayor of Albany. A member of the Federal Constitutional Convention and of the New York convention that ratified it. In 1790 he became a Justice of the Supreme Court of New York and in 1798 Chief Justice, and in 1814 Chancellor of the State. He was the compiler of Lansing's "Selected Cases in Chancery." One day in 1829 he mysteriously disappeared, having left his hotel in New York City to post a letter on the Albany boat. He was supposed to have been either robbed and murdered or drowned.

[8] VARICK, Richard (1752–1831). Soldier in the Revolutionary Army, and Washington's Recording Secretary. He was from the evacuation of New York by the British until 1783 Recorder of that city. He then became Attorney-General and from 1791 to 1801 was Mayor of New York.

[9] HARRISON, Richard (1758–1841). Consul at Cadix, United States Auditor under President Washington and Recorder of the City of New York.

A. Hamilton,[11] *H. B. Livingston* [12] and *A. Burr,*[13] for the Prisoner.

March 31.

Proclamation having been made in the usual form, the prisoner was placed at the bar. Thirty-four jurors answered to their names.

The Clerk. Levi Weeks, prisoner at the bar, hold up your right hand, and hearken to what is said to you. These good men who have been last called, and who do now appear, are those who are to pass between the people of the State of New York and you upon your trial of life and death; if, therefore, you will challenge them, or either of them, your time to challenge is as they come to the book to be sworn, and you will be heard.

Several Quakers on the jury asked to be excused as they had scruples of conscience in a case of life and death and they were excused by the Court. The prisoner challenged eleven jurors who were set aside. The Assistant Attorney-General

[10] COLDEN, Cadwallader David (1769–1834). Studied law in New York and London, England. Became District Attorney of New York in 1810 and Mayor of New York in 1818.

[11] HAMILTON, Alexander (1757–1804). Born in the West Indies and was educated there, and after a short time in a counting-house removed to New York in 1772. Was one of the great minds of the Revolution. Washington made him his first Secretary of the Treasury. His brilliant career was ended by the unfortunate duel with Burr.

[12] LIVINGSTON, Henry Brockholst (1757–1823). A graduate of Princeton. Served in the Revolutionary War. Practiced law in New York from 1783–1802, when he was made a judge of the State Supreme Court. In 1807 became an Associate Justice of the United States Supreme Court.

[13] BURR, Aaron (1756–1836). Soldier, lawyer and statesman. A Lieutenant Colonel in the Revolutionary War. Afterwards studied law in New Jersey and was admitted to the New York bar in 1782. A leader of the bar with no rival except Alexander Hamilton. In 1791 was elected to the United States Senate, and in 1800 became Vice-President of the United States. His duel with Hamilton in which the latter was killed took place July 7th, 1804. In 1807 he was tried for high treason and though acquitted, his good name was not restored, and he soon left the country. Refused for some time permission to return to the United States, he came home under a false name in 1812. Shunned by society, though with a considerable practice, he lived twenty-three years longer in New York.

challenged one but did not persist after he had shown his qualifications.

The following jurors were sworn: Garrit Storm, Simon Schermerhorn, Robert Lylburn, George Scriba, Richard Ellis, James Hunt, John Rathbone, William Wilson, William G. Miller, Samuel Ward, William Walton and Jasper Ward.

The Clerk. Gentlemen of the jury, the prisoner at the bar stands indicted for the murder of Gulielma Sands.[14] He has

[14] City and County of New York } ss.

"THE Jurors of the People of the State of New-York, in and for the city and county of New-York, on their Oath present, that LEVI WEEKS, late of the seventh ward of the city of New-York, in the county of New-York, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the 22d day of December, in the year of Our Lord 1799, with force and arms at the ward aforesaid, at the city and county aforesaid, in and upon one GULIELMA SANDS, in the Peace of God, and of the said people then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Levi Weeks then and there feloniously, wilfully, and of his malice aforethought did take the said Gulielma Sands into both the hands of him the said Levi Weeks, and did then and there feloniously, wilfully, and of his malice aforethought, cast, throw, and push the said Gulielma Sands, into a certain well there situate, wherein there then was a great quantity of water; by means of which said casting, throwing and pushing, of the said Gulielma Sands into the well aforesaid, by the said Levi Weeks, in the form aforesaid, the said Gulielma Sands, in the well aforesaid, with the water aforesaid, was then and there choked, suffocated, and drowned; of which said choking, suffocating and drowning, the said Gulielma Sands, then and there instantly died. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Levi Weeks, her the said Gulielma Sands in the manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did then and there kill and murder, against the peace of the said People and their dignity:— And the Jurors aforesaid, on their oath aforesaid, do further present, That the said Levi Weeks, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the same twenty-second day of December, in the year of our Lord 1799, with force and arms, at the same seventh ward of the city of New-York, in the county of New-York aforesaid, in and upon Gulielma Sands, in the peace of God and of the said People, then and there being, feloniously, wilfully, and of his malice aforethought did make an assault, and her the said Gulielma Sands, then and there feloniously, wilfully, and of his malice aforethought, did strike, beat, and kick, with his hands and feet, in and upon the head, breast, back, belly, sides, and other parts of the body of her, the

been arraigned, pleaded not guilty and is now to be tried by his country, which country you are; so that your charge is, gentlemen, to inquire whether the prisoner at the bar is guilty of the felony whereof he stands indicted, or is not guilty, so sit together and hear your evidence.

Assistant Attorney-General Colden. In a cause which appears so greatly to have excited the public mind, in which the prisoner has thought it necessary for his defence, to employ so many advocates distinguished for their eloquence and abilities, so vastly my superiors in learning, experience and professional rank; it is not wonderful that I should rise to address you under the weight of embarrassments which such circumstances actually excite. But, gentlemen, although the abilities enlisted on the respective sides of this cause are very unequal, I find consolation in the reflection, that our tasks are so also. While to my opponents it belongs as their duty to exert all their powerful talents in favor of the prisoner, as a public prosecutor, I think I ought to do no more than offer you in its proper order, all the testimony the case affords, draw from the witnesses which may be produced on either side all that they know, the truth, the whole truth, and nothing but the truth. If I had the power of enlisting the passions and biasing the judgment, which those opposed to me possess, I should think it unjustifiable to exert it on such an occasion.

Levi Weeks, the prisoner at the bar, is indicted for the murder of Gulielma Sands. He is a young man of reputable

said Gulielma Sands, and did then and there feloniously, wilfully, and of his malice aforethought, cast, and throw the said Gulielma Sands, down unto and upon the ground, giving unto the said Gulielma Sands, then and there by the beating, striking, and kicking her, the said Gulielma Sands, in the manner aforesaid, several mortal strokes, wounds, and bruises, in and upon the head, breast, back, belly, sides, and other parts of the body of her, the said Gulielma Sands, of which said mortal wounds, strokes and bruises, the said Gulielma Sands then and there instantly died:——And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Levi Weeks, her the said Gulielma Sands, in manner and form aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder, against the Peace of the said People and their Dignity."

connections, and for aught we know, till he was charged with this crime, of irreproachable character, nay of amiable and engaging manners, insomuch that he had gained the affections of those who are now to appear against him as witnesses on this trial for his life. These are circumstances greatly in his favor, and there is no reason to fear that they will not be urged with all their force. We are aware that you will not convict such a one of the horrid crime of which he is accused upon less than the utmost evidence that the nature of the case admits, and that you will not readily be convinced that one so young has already embrued his hands in blood of the innocent.

The deceased was a young girl, who till her acquaintance with the prisoner, was virtuous and modest, and it will be material for you to remark, always of a cheerful disposition, and lively manners, though of a delicate constitution. We expect to prove to you that the prisoner won her affections, and that her virtue fell a sacrifice to his assiduity; that after a long period of criminal intercourse between them, he deluded her from the house of her protector under a pretence of marrying her, and carried her away to a well in the suburbs of this city, and there murdered her.[15] No wonder, gentlemen, that my mind shudders at the picture here drawn, and requires a moment to recollect myself. I will not say, gentlemen, what may be your verdict as to the prisoner, but I will venture to assert, that not one of you or any man who hears this cause, shall doubt that the unfortunate young creature who was found dead in the Manhattan well, was most barbarously murdered.

Elias Ring, and Catherine his wife, keep a boarding-house in the upper part of Greenwich Street; the deceased was a distant relation of theirs who lived with them. Hope Sands, a sister of Mrs. Ring, and Margaret Clark, lived in the same house. In July last, the prisoner was received into the house as a boarder. Upon his first coming, for about a month, he

[15] Here the speaker suddenly stopped a few seconds, as if overpowered with his emotions.

showed some attention to Margaret Clark, but soon after was observed to attach himself in a very particular manner to the deceased. Their conduct soon led to suspicions in the family, that there was an improper intercourse between them. In the month of September, Mrs. Ring fled from the fever, leaving the care of her house to her husband, and the deceased; and leaving in it also the prisoner and some other boarders. Mrs. Ring remained out of town about six weeks, and in that time it is certain that the prisoner and the deceased lived together in the most intimate manner. On the first of December last, the deceased disclosed to Hope Sands, that on the next Sunday she was to be married to the prisoner, but at this time, and whenever afterwards she spoke on the subject, enjoined on Hope the strictest secrecy, forbidding her to tell even Mrs. Ring, saying that Levi hoped to keep their marriage a secret, even from her (Hope) and therefore that no one should go with them to see the ceremony performed. Between this time and the time of her departure from the house, it will be seen she frequently spoke of her approaching marriage, and always with cheerfulness and a lively pleasure. On Saturday, the 21st of December, the day before the fatal accident, Hope disclosed the secret to Mrs. Ring, informing her, that Elma was to be married the next evening. On the Sunday about dinner-time, Mrs. Ring discovered to the deceased that she knew her intentions. The deceased, you will find, then confessed that she was to be married, and that the prisoner was to come for her that night at eight o'clock. Mrs. Ring pressed the deceased to be of the party but she said Levi would not consent, as he meant to keep his marriage a perfect secret from all. In the evening the deceased began to dress herself, in which Mrs. Ring assisted her; the deceased appeared perfectly cheerful all this time, she put on her hat and shawl, and went to a neighbor's and borrowed a muff, which she promised to return in a little time. She also took up a pocket handkerchief belonging to one of the boarders, saying she should not make use of it, and would return it before it was missed. You will have evidence that the pris-

oner had left the house of Mr. Ring, about five o'clock in the afternoon, and that about eight o'clock in the evening the deceased stood leaning over the front door, looking out; that Mrs. Ring desired her to come in, saying she did not believe that Levi would come, to which she answered, she did not fear, it was not yet eight, but she left the door and went in with Mrs. Ring, and in a little time the prisoner returned, and came into the room where was Elias Ring, Mrs. Ring, the deceased, and two boarders, by the names of Lacey and Russel. Mrs. Ring sat with them about five minutes, when she got up and went to the street door, and leaned over it till Lacey and Russel went up stairs to bed. She then left the street door, shut it after her; went into the room again, and was hardly seated when the deceased went up stairs; Mrs. Ring immediately followed her, found her in the room above, pinned on the shawl for her, and after being with her not more than two minutes, left her in the room opposite the stairs, just on the point of coming down. Mrs. Ring returned to the room below where the prisoner was; in about a minute he took up his hat, and as he opened the room door to go out, Mrs. Ring heard somebody come lightly down the stairs, and as she supposes, meet him at the bottom; she then heard two voices whispering at the foot of the stairs for about a minute, she then heard the street door open and immediately shut, she took a candle and went to the door to look after them but it was dark and so many people passing, that she could not distinguish anyone. The street door you will find, opens with a great and remarkable noise, in consequence of its being out of order.

Gentlemen, it will be necessary for you to pay particular attention to this part of the evidence, for if you believe that the prisoner, at this time, went out of the house with the deceased, I do not see how he can be acquitted. After Mrs. Ring shut the door, it was not again opened till the time when she supposes the prisoner and the deceased went out. We shall show you that there were no other persons in the house till ten or eleven o'clock, but Elias Ring, who remained

in the common sitting room, and the two lodgers, Lacey and Russel, who we shall prove to you lodged together, and were not out of their lodging room from the time they went up stairs. From this time the deceased was never after seen till her corpse was found in the Manhattan well. She had the marks of great violence upon her, and a great part of her clothes were torn off.

We shall produce a number of witnesses, who, between the hours of eight and nine of the evening of the 22d of December, heard, from about the place of the well, the voice of a female crying murder, and entreating for mercy. It will be shown to you, gentlemen, that there was the track of a single horse sleigh, which we shall prove that at some time between the Saturday night before, and Monday morning succeeding, must have come out of Greenwich street, and passed in a very extraordinary manner near the brink of the well; that the snow round the edge of the well was much trodden, and that the sleigh after having made a curious turn or stop near the well, must have passed on to the Broadway road, and, in coming into that, turned towards town.

We shall show you, that on the evening of the 22d of December, soon after the deceased left her house, she was met a few hundred yards from her house in the way towards the road that leads to the well, in company with two men; that a few hundred yards further on, and about the same time, a single horse sleigh was seen with two men and a woman in it; the horse of a dark color and without bells, passing on towards the road or street which leads from Greenwich street to the well.

Our next testimony will be, to prove to you, that a number of young gentlemen riding for pleasure on the same evening, as they were coming into town, between eight and nine o'clock, on the Broadway road, when they were some distance nearer to the town than the place where the track of the one horse sleigh was discovered to have turned into Broadway road, were overtaken by a single horse sleigh, which passed them with the horse on a full gallop and without bells; there were

two men in it and the horse was dark colored. We shall then show you that Mr. Ezra Weeks, the brother of the prisoner, was the owner of a single sleigh, and a dark horse, and that the prisoner had access to it when he chose, and we shall produce to you such testimony, as we suppose will satisfy you that this horse and sleigh was taken out of the yard of Ezra Weeks, about 8 o'clock in the evening of the 22d of December, and was returned again into the yard in less than half an hour.

You will see, gentlemen of the jury, that we have only circumstantial evidence to offer you in this case, and you must also perceive that from its nature it admits of no other. I shall, however, reserve my remarks upon this subject for a future stage in the cause; and shall, without delaying you longer, proceed to call the witnesses.

Counsel for the prisoner moved that the testimony of Elizabeth Watkins be taken in an adjoining house, where, by an affidavit of her husband which they presented, she was sick in bed too ill to attend. Granted, and Mr. Justice LANSING, Mr. *Colden* and Gen. *Hamilton* went to her house and took her deposition. When they returned it was moved that the husband of Catharine Ring be ordered to withdraw from the court during her testimony. Granted.

WITNESSES FOR THE PROSECUTION.

Catherine Ring. In July last Levi Weeks came to board in our family and soon after began to pay attention to Margaret Clark until about the 28th of the 8th month when she went into the country. About two days later Gulielma Sands asked me, . . .

Mr. *Livingston* objected to these declarations as inadmissible as they were hearsay. The declarations of a murdered person are sometimes received as evidence against a prisoner but only when they were made after a fatal blow or in his last moments and are therefore supposed to be made under an equal solemnity with an oath.

Colden insisted that such testimony was proper to show the disposition of mind in the deceased, when she left the house on the night of the fatal accident; that this was the only way to discover whether she was sound in her intellects, or whether she was not under the impressions of melancholy—and that in reality, this was one of those cases, where evidence was to be admitted upon the necessity of the thing.

The COURT. The evidence is

not admissible. Go on, witness, but say nothing as to what Elma said to you.

Catherine Ring. Elma lived in our house about three years as our child. Soon after Margaret Clark went away Levi became very attentive to Elma. They were left in the house with my husband about the 10th of the 9th month when I was in the country. Elma slept in the front room, second story.

After I had been absent about four weeks, I received a letter from my husband, desiring me to come home as he was very lonesome, and I came home six weeks to a day. After my return I paid strict attention to their conduct, and saw an appearance of mutual attachment, but nothing improper; he was frequently in the room when she was sick. Shortly after my return, she concluded to pay a visit to her friends in the country, though she did not seem very anxious to go as it was so late in the season; however, after she got ready to go, Levi accompanied her to the vessel, and she stayed about two weeks. During her indisposition he paid her the strictest attention, and spent several nights in the room, saying he did not like to leave her with Hope (my sister), fearing she might get to sleep and neglect her; and in the night he wanted to go for a physician, but I discouraged him, thinking she would get better by the morning. One night after she went to bed . . . *(The counsel for the prisoner stopped the witness, to inform the court that Elias Ring, although ordered out, had returned and was standing behind his wife, the witness. The* COURT *ordered the constable to take him out, and reprimanded him for his behavior.)* I thought I would step up into her room and see how she did. I slipped off my shoes, and going quick without making much noise, I partly opened the door, and saw Levi sitting by the side of her bed, and the door was shut against me, I took it to be by him, because she was in bed and could not reach the door. The next morning he said he had made a fire just before day in his own room, and he discovered more concern than I expected.

Not a day passed but convinced me more and more that he was paying his attentions to her; I often found them sitting and standing together, once sitting together on her bed. On the 22d of December, my sister Hope went to meeting, and Levi went to his brother's; in a short time he returned, having fallen and hurt his knee, which circumstance, struck my mind, would prevent their intentions for that time; Sylvanus Ruffel said, Levi, you won't be able to go out today—He answered, I am determined to, to-night. Elma then dressed his knee for him—it was not much of a hurt—I saw it—she got a plaister. After she had dressed it—he went up stairs a short time—she also followed him, and was gone I should suppose considerably more than an hour, this was about noon. His apprentice came down to do something, and in a little time went up, but soon returned again; the thought struck me that they had sent him down to get him out of the way. Between 12 and 1 o'clock she came down into the room where I was preparing dinner, with a smiling countenance, and seemed much pleased. I spent the afternoon with her, her countenance

and behavior was calm and composed, and fully happy, as likewise her appetite remarkably good. I left her a short time, and went into another room; when I returned I found Levi sitting by the fire with her, appearing fully composed and happy; but he soon left us and went up stairs. Shortly after Elma went also; in about 20 minutes she returned not quite dressed, with her handkerchief in her hand, saying to me, "Which looks best?" Then Levi came down, nearly dressed also, with his coat upon his arm, at which time, Elma stepped behind the curtain of the bed. He said, "Where's Elma?" I said, "She is hid behind the bed." He said, "Don't mind me—I want you to tie my hair." Elma came out and did so; Elias came in from meeting, and she went up stairs, and Levi after her: this was about sunset, and she did not come down till after dark, and Levi I believe staid as long, for one of the family went up and found them together. After tea I proposed borrowing a muff for her at one of the neighbor's, she said she would go herself, and she went and got it. A while after she went to the front door and leaned over it. I told her I was afraid she would take cold; she followed me in, where was two young men of the family, Russell and Lacey, with my husband—we all sat together till Levi came in—I then went to the front door and leaned over it—soon after the young men came out and went upstairs to bed, at which time I heard the clock strike eight. After they had gone upstairs, I shut the door, and came in, saying, the clock has just struck eight. I sat down, and in the course of a minute or two afterward, Elma got up and went out, and I observed Levi's eyes fixed upon her, and I thought he looked at her for to go; in the course of a minute, I believe not more, I took the candle and went up-stairs, she had her hat and shawl on, and her muff in her hand; I observed she looked rather paler than usual, but I thought it a natural consequence, and told her not to be frightened. I went down, and left her just ready to follow—Levi took his hat—

Colden. Pray, Mrs. Ring, in what situation did you leave Elma upstairs?

I left her just ready to come down, just coming down, she came down almost instantly. I came down and left her in the room and came in where Elias and Levi were sitting; no other person was up in the house but we four. I set the candle down over the fire-place, Levi instantly took his hat and went out into the entry; the moment the door opened, I heard a walking on the stairs, and directly I heard a whispering near the door, at the bottom of the stairs for nearly a minute, but so near the door I thought I might understand what was said, and I listened for that purpose; soon I heard them step along, and the front door opened and the latch fell. I took up the candle and ran to the door to see which way they went; it was moonlight, but having a candle made it darker.

Prisoner's Counsel. Mrs. Ring, are you sure you shut the door before? I am positive; it stuck much and it was difficult to shut it. I then ran up stairs to see if they might not be there, but why I did it, I don't know, I can't say, but somehow I felt agitated on the occasion, but she

was not there. I heard the steps of but one person.

The COURT. Did Levi return to his lodgings the same evening? About ten o'clock he returned, and his apprentice was there waiting for him as he had the key of the room, and the boy could not go to bed. The moment he opened the door I cast my eyes upon him, his countenance was pale and much agitated. His apprentice was standing waiting for him; he came to the fire, took the key out of his pocket and gave it to him, saying in a short tone, "Go to bed." He sat down and said, "Is Hope got home?" I answered, "No." "Is Elma gone to bed?" I said: "No—she is gone out, at least I saw her ready to go, and have good reason to think she went." He said, "I am surprised she should go out so late at night and alone." I replied, "I have no reason to think she went alone," to which he made no reply, but looked earnest and thoughtful and leaned down his head on his hand in this manner (*putting her hand over her left eye, and leaning her head upon it*).

Mr. *Colden*. Had anything passed to lead him to believe that she went out alone? No, there had not.

The COURT. Did you express any alarm to him? No. Feeling very uneasy and agitated, I thought I would speak to Levi more particularly than I had done, and I told Elias to go to bed, and I would fix the child and bring it to him; and he got up to go, upon which Levi instantly rose and went upstairs. I thought she had gone to one of the neighbors to leave the muff; I was then determined to sit up until she should come in: I accordingly put out the candle and covered up the fire, supposing that perhaps he would come down after he thought us a-bed and let her in. After waiting till about 12 o'clock and nothing appearing, I lit the candle and searched the house, thinking perhaps that she had come in; and went to every room, excepting that where the two lodgers was a-bed, and to Levi's room. I went to his door twice but seemed as if I had not power to enter.

The COURT. Was anything said about Elma at breakfast, by anybody? No, nobody mentioned her. After he had been out awhile, I heard some person enter the house and run softly up stairs, and expected it was her, and intended to go and see; soon after which Levi came in, saying, "Is Elma got home?" I answered I have not seen her: I felt provoked that he should ask me where she was and thought that at least he might be silent. He then said, "I am surprised where she should be." I answered, "I expect she is upstairs, I heard some one go up." He replied, "It was me you heard." I observed, "Thee went more softly than ever before, and I'm sure I thought it her step." He immediately run upstairs, and instantly returned, saying, "She is not in the second story." I did not believe him, and went up myself; when I returned he was standing at the front door, but don't recollect his saying anything; when I said, "I'm surprised where she should be," but went away; some time after he came in again and said, "Is Elma returned?" I answered "No." "Have you sent anywhere for her?" I answered, "No." He said, "Why have not

you?" I answered, "I did not think of sending, expecting her in every minute." He said, "I am surprised at her going out so late and alone." I said, "Indeed, Levi, to tell the truth, I believe she went with thee, she told me she was to, and I have good reason to think she did." He looked surprised, and said, "If she had gone with me she would have come with me, and I never saw her after she left the room." He then went out.

The COURT. Was there anything uncommon in his manner? There was to be sure, more than I can express.

Prisoner's Counsel. Do you mean that this was after you expressed your surprise? I had observed his look fixed upon me before.

The COURT. Did you tell him of this? Did you observe to him that there was a difference in his look? I did not then.

In a short time after, the owner of the muff called for it, as Elma had promised to return it the night it was borrowed, or early the next morning; I told her I would send for it, and the girl would fetch it home, as I expected Elma was at Henry Clement's. She answered she would sit with me, and sat down, during which time Levi came in and sat until the girl returned, saying, Elma had not been there. I was struck with astonishment, although my uneasiness had been great, yet I fully expected she was there; the person immediately said, "I guess she has gone to be married, and that made her borrow my muff." I answered, "Married or not, I think it is very ungenerous not to return it, and likewise to keep me in suspense and uneasiness;" at which conversation Levi gave no answer, but set with his head down and then he went out. Soon after this my sister returned; in a short time after Levi came in; she immediately attacked him, saying, "Where is Elma, I know thee knows; tell me ingenuously for Caty is very uneasy, and says Elma told her she was going with thee, and she is sure she did." He looked surprised, and said, "She told Caty so? Why if she had went with me, she would have returned with me; I never saw her after she left the room, and am surprised you would think of my keeping you in suspense." The day passed without much more being said, except my saying I had been to the door fifty times to look for her; he answered he had looked more than fifty times; he could not keep his eyes from the street.

The next morning being Tuesday, the 24th, after the boarders had breakfasted, none of the family up but them and myself, they all went out excepting Levi, who seeing me much distressed walked the room several times, appearing much agitated, came to me, and taking hold of my arm, said, "Mrs. Ring, don't grieve so. I am in hopes things will turn out better than you expect," to which I gave no answer, as I expected he was then going to tell me the whole matter. He soon, however, took his hat and went away. Nothing more was said till afternoon, when myself and sister being so distressed we determined to stand it no longer, and we were about to send for him when he again came in, laid down his hat; but on seeing our agitation, he turned round and was going out; I said, "Stop, Levi, this matter has become so serious, I can stand it no

longer." I then said, "It certainly lays upon thee, therefore thee must make the best of thy way to get clear of it." He said he was willing to give what satisfaction he could, being sorry to see us so distressed. I said, "If it had been many a person that I should have even been willing for her to have, I would not have waited one hour before they should have given an account of her, but my confidence in thee was so great, and fearing too to make her trouble, as she was bound not to disclose it, is the reasons why I did not immediately mention it." I then proceeded: "On first day after 12 o'clock, she came down stairs after being with thee, and told me, that night at eight o'clock you were going to be married, that you did not go till 8 o'clock on account of its being froze." I had not proceeded much further, if any, before he turned pale; he trembled to a great degree; was much agitated, and began to cry, clasping his hands together, cried out, "I'm ruined —I'm undone forever, unless she appears to clear me—my existence will be only a burden—I had rather die, than live under it." Then he proceeded to clear himself, saying, he never would attempt to marry without his brother's approbation. I replied, she told me, thee had talked to him twice on the subject; he said my brother can answer for himself. Thus he proceeded until we were hardly able to support it; as our dependence as to her, was entirely upon him, not having a thought short of his knowing where she was.

On Thursday, the 26th of December, about 10 o'clock, Margaret Clark and her sister, Deborah Clark, being in the room with me, Levi came in; seeing us much distressed, he sat down and endeavored to comfort and console us, saying, "Give her up, she is gone no doubt, and all our grieving would do no good." With an earnest look, I turned to him, saying, "Levi, give me thy firm opinion from the bottom of thy heart, for I don't doubt thee has one; tell me the truth, what thee thinks has become of her." He replied, "Mrs. Ring, it's my firm belief she's now in eternity; it certainly is, therefore make yourself easy, for your mourning will never bring her back." I answered, "Why does thee say so? What reason has thee to think it?" "Why from things I've heard her drop." "What were they?" I asked. "Why I heard her say she wished she never had an existence."

Prisoner's Counsel. Pray, Mrs. Ring, did you say you had wished that you had never had an existence? Yes—I dare say I have—in this very case, I might say, I wish I never had an existence to witness such a scene. I acknowledge it's wrong, but still I don't believe I have often said so. I asked Levi, "What other reason has thee?" "Why, I have heard her threaten, if she had laudanum, she would swallow it." "Why, Levi! How can thee say so? As it was always easy for her to get that, it don't bear the weight of a single straw with me, and the circumstance thee alludes to, I believe I was present as well as several others," which he did not deny, nor mention any other time. The circumstance was this, my sister was unwell, the doctor had left a small phial with her, and she had it in her hand, clapped it up to her mouth, he

said, "Elma, don't do so." She replied, "I should not be afraid to drink it if full." My husband answered, "Why the foolish creature, it would kill thee." She answered, "I should not be afraid." I thought she spoke not thinking, though she was used to taking large quantities when sick, and this made her think light of it, but I supposed she did it only to tease him.

I frequently conversed with him on the subject, always pointing out the impossibility of any other persons knowing it, all which he never resented. On the day of the procession he came to me saying, "Mrs. Ring, what objection have you to Hope's going with me to the alderman to say what she can in my favor?" I answered, "Yes, very great objections, if I even believed thee innocent, which I have no reason to think, and it's publicly reported of thee, if she was even willing, which I am sure she is not." "Well, then let her go with my brother." "Indeed, I've no choice in thee or thy brother; if the authority calls for her, she will answer I dare say to what's proper." He then said, "Mrs. Ring, you are not so much my friend as you have been." "Indeed, Levi, I shudder to think I ever indulged a favorable thought of you."

Mr. *Colden.* Pray, Mrs. Ring, I wish you would be particular as to her temper and disposition on the 22d; pray, inform the court and jury, was it composed that afternoon? Very much so, I never saw her pleasanter in my life—she was more so than usual. I always thought her disposition rather too gay for a Friend, and she altered her dress and behavior to please me. Pray, madam, has she not always borne a good character, I mean that of a modest, discreet girl? Very much so, I have known her from an infant, but there are others that can speak of her, who had not that partiality for her that I had. Let me ask you, would not the conduct between the prisoner and her have been esteemed improper if it was not supposed they were soon to have been connected in marriage? Yes. How old was she? About five years younger than myself, she was about 22 at the time of her death. Was Elma one of the Friends? She was not, though we wished her to be. Pray, what relation was she to you? She is my father's sister's daughter. Had she parents living? Her mother is alive at New-Cornwall; her mother never was married; she took her mother's name of Sands; her father is in Charleston, South Carolina. When was the body found? The 12th day after she left our house, or the 2d day of January.

Cross-examined by Prisoner's Counsel. Levi's character while he boarded in our house was such as to gain the esteem of everyone. His moral conduct was good. After this affair of the 22d, he ate his meals as usual. I regarded Elma as a sister. Hope and Elma walked out together, they were associates. Levi did not walk out with her as I know of. He went once to a Charity Sermon with Hope, and Elma was to have gone too, but the going was wet, and she was not very well, and I would not suffer her to go. The day Elma went out, the 22d of December, she looked rather paler than usual when I pinned on her handkerchief—it was her natural color. For about a year past she was at times rather unwell. She was

much troubled with the cramp in her stomach. She at first slept in the third story before I went into the country, but for three weeks before her death, she slept in the back room in the second story next to Mr. Watkin's bed room. There was no other female in the house when I went to the country. I never asked Levi whether he was engaged to Elma till Tuesday, after her death. Nor said a word about it to him. I had no reason to suspect that any other person but Levi had an improper intimacy with her.

Hope Sands. The first time I knew Levi and Elma to be together in private was about two weeks after I and Elma came to town. I then found Levi and Elma together in her bed-room; I was there with Elma when Levi came in, on which Elma gave me a hint, I immediately went out; he followed me to the door and shut it after me, and locked it.—I went down stairs, left my shoes at the bottom of them, and went softly up to listen if I could hear their conversation, but could not understand anything, although I heard a whispering and stayed at the door a long time, more than an hour. Hearing some person come in below, I ran down, where I found Doctor Snedeker; on my coming into the room, Peggy Clark took the candle and went up to the room where Levi and Elma were; on finding the door locked, she returned, much surprised at finding it fast, and asked me if I knew who was there. I answered, "I will go and see." She followed me up to the door; finding it locked we went into the next room, when the door was unlocked, and Levi came out. I observed to Levi that he intended being very safe, having secured the door that Peggy could not gain admittance. He then said, "Where is Peggy?" and looked into the room—but she stepped behind the door, so that he did not see her; he then left us and went up stairs. There was no light in the room when I left them, neither when he came out, therefore, I am positive they had not any. I then went in and found Elma sitting on the bed. I told Mrs. Ring of this the same evening.

On Monday, the next day after Elma was missing, about ten or eleven o'clock in the forenoon, I met Levi up stairs alone. I attacked him about her; he denied knowing anything of her, though from his looks I was confident he did. He soon began to use all possible means to convince me of his innocence. I replied it was hard to judge one I had so good an opinion of, but he was certainly the person who could give information of her if he chose. He said, "Do you think if I knew where she was I would not tell you?"

The Sabbath evening after she was missing, he came to me saying, "Hope, if you can say anything in my favor, do it, for you can do me more good than any friend I have in the world to clear me; therefore, if you can say anything, do it before the body is found, as after it will do me no good; but if the body is found a good way off, that will clear me, as I was not a sufficient time from my brother's to go far." He then pressed me very hard to go to the Alderman's and see him; I refused, upon which he gave me a paper he had drawn, wishing me to sign it. The purport of the pa-

per was, that he had paid no more particular attention to Elma, than to any other female in the house; that nothing had passed between them like courtship, or looking like marriage. I took it from him, saying I supposed I might read it, and left him without saying any more on the subject till the day of the procession. He then came to me saying, "Hope, will you accompany me to see the procession?" I replied, "No, I have seen processions enough." He then said, "Hope, don't you intend to sign that paper for me?" I answered, "No," and drew it from my pocket; I then pointed out to him the inconsistency of my doing it, saying, "Levi, if I was to do it, thee knows it would be positive lies." He said it would be of no service to me, and reached out and took it from my hand, saying, "Will you go to the police with me?" I answered, "No." He said, "Will you go with my brother?" I replied, "No, what better would it be to go and say it than to sign the paper?" He then asked me if I would consult my sister upon it? I still answered no, for I was sure she would not consent to any such thing, if I ever so inclined myself, which I am very far from.

Cross-examined by Prisoner's Counsel. Levi and Elma were locked up together at the time about an hour. He was liked very much, all spoke well of him. He went once to the Museum with me and Elma. He went once to church with me of an evening; Elma was to have gone, but she was sick. I never knew him to walk out with her but that time; I heard him say one evening, that he believed she despised him, for she would never go in the street with him. He once asked me to go to his brother's but I could not conveniently; Elma was present—she said, "Why don't you ask me?" He replied, "I know you would not go if I did."

Elias Ring. Levi Weeks was a lodger in my house, and in the 9th month—

Prisoner's Counsel. What month is that called? I don't know it by any other name, thee can tell.

At this time, when my wife was gone into the country, Levi and Elma were constantly together in private. I was alone and very lonesome, and was induced to believe from their conduct, that they were shortly to be married. Elma's bed was in the back room, on the second floor; the front room had a bed in it, in which Isaac Hatfield slept about three weeks. Hatfield during this time was occasionally out of town. I slept in the front room below; and one night when Hatfield was out of town, I heard a talking and noise in his room. In the morning I went up into the room and found the bed tumbled, and Elma's clothes which she wore in the afternoon lying on the bed. I never saw anything improper in the behavior of Elma, until she was acquainted with the prisoner.

Cross-examined by Prisoner's Counsel. I have seen familiarities between Levi and Margaret Clark. I never heard any noise when Hatfield slept in the room over me. I never knew that the prisoner and Elma were in bed together. The partition between Watkin's house and ours is a plank partition, lathed and plastered. Mr. Watkins is a good neighbor. On December 22d El-

ma was as cheerful and gay as I ever saw her. On that day I had been to meeting in the afternoon; I returned and found Elma dressing, and my wife helping her in dressing, and assisting her in putting on her gloves, long white ones. About eight o'clock, Elma went out; I saw her go out of the room, and heard the front door open, and shut about 3 or 4 minutes thereafter, and my wife took the candle and went out and was gone about 2 minutes. The two boarders, Lacey and Russel, came in, and one of them pulled out his watch and observed that it was 8 o'clock. I am not certain that I heard anybody go up-stairs. When my wife returned, I asked her who went out? She said, "Elma and Levi." I answered that it was wrong, she would get sick; she replied, "He will be more careful of her than I would be." About 10 o'clock Levi came in. He asked if Hope had got home; my wife answered, "No." He asked, "Is Elma gone to bed?" She answered, "No, she is gone out." He observed it was strange she should go out so late and alone. I never threatened Levi that I know of; I had a conversation with him, in which he asked me if I had not said certain things about him, respecting Elma being missing, and he said if I told such things of him he would tell of me and Croucher. I told him I believed him guilty and he appeared as white as ashes, and trembled all over like a leaf. His character was always good, for anything I know, and his behavior was such, that he was generally esteemed. I never spoke to Elma about her improper intimacy with Levi. I heard no whispering in the entry, or anybody come down stairs. I sat in the corner and was not attentive to these things.

Margaret Clark. I lived at Mr. Ring's about six months before Levi Weeks came to board there, and Gulielma Sands lived there. I can't say I thought there was anything that looked like courting Elma, but they appeared intimate. I knew once of their being locked up together in the bed room. Afterwards he told me they were in the bedroom together. This was the Monday evening before she was missing. Another time I saw him standing in her room when she was sick, but I thought nothing of this, because he was always attentive to anyone that was sick.

Prisoner's Counsel. Did not Levi pay as much attention to Hope Sands as he did to Elma? Yes, I think he did and more too. (She corroborated the testimony of the other witnesses with regard to the cheerfulness of temper of the deceased.)

Isaac Hatfield. I lodged at Mr. Ring's from the 14th or 15th of September, four or five weeks; I lodged in the front room, on the second floor; I observed a great intimacy between the prisoner and the deceased, such as to induce me to suppose he was paying his addresses to her, with a view to marry. The deceased was of a lively and cheerful temper.

Richard David Croucher. May it please the Court and Gentlemen of the Jury. I was a lodger but not a boarder in Mr. Ring's house; I remained at the house all the time of Mrs. Ring's absence, and paid particular attention to the behavior of the prisoner and the deceased, and I was satisfied from what I

saw there was a warm courtship going on; I have known the prisoner at the bar, to be with the deceased, Elma Sands, in private frequently and all times of night. I knew him to pass two whole nights in her bed room. Once lying in my bed, which stood in the middle of the room, and in a posture which was favorable to see who passed the door, and which I assumed on purpose; I had some curiosity; I saw the prisoner at the bar come out of her room, and pass the door in his shirt only, to his own room. Once too at a time when they were less cautious than usual I saw them in a very intimate situation. I did not tell anyone of it.

Prisoner's Counsel. Pray what countryman are you? An Englishman; I have been in this country since January, 1799. Where, sir, was you on the night of the 22d of December, 1799? I supped that night at Mrs. Ashmore's, 884 Bowery Lane; it was the birthday of her son. In the course of the evening when the deceased was missing, I crossed twice or three times from Greenwich street to Broadway and was once at the Coffee-house; I went out to the Bowery and returned to Mrs. Ring's. It was my agreement with Mrs. Ring to be home at 10 o'clock a'nights, but on this occasion I staid out till eleven or half past eleven. Do you know where the Manhattan Well is? I do. Did you pass by it that evening? I did not—I wish I had—I might, perhaps, have saved the life of the deceased. Have you not said you did? No. I might have said I wished I had. Have you ever had a quarrel with the prisoner at the bar? I bear him no malice. But have you never had any words with him? Once I had—the reason was this, if you wish me to tell it: going hastily up stairs I suddenly came upon Elma, who stood at the door. She cried out, "Ah!" and fainted away. On hearing this the prisoner came down from his room, and said it was not the first time I had insulted her. I told him he was an impertinent puppy. Afterwards, being sensible of his error, he begged my pardon. And you say you bear him no ill will? I bear him no malice, but I despise every man who does not behave in character. How near the Manhattan Well do you think you passed that night? I do not know what route I took. I go sometimes by the road, sometimes across the field. I believe there was a little moonlight—the going was very bad.

Mr. *Colden.* Mr. Croucher, have you ever heard any noise in the room of the prisoner at an uncommon time of night since this affair happened? Yes, sir, I have. The night the deceased was missing and the next night, and every succeeding night while he stayed in the house, I heard him up whenever I waked at all hours from 11 o'clock at night till 4 in the morning, and a continual noise almost. I thought then his brother had some great work on hand and that he was drawing plans; but since I have accounted for it in a different way.

Prisoner's Counsel. What kind of noises were these? The noise of moving about chairs, throwing down the tongs, and such kind of noises. Were you ever upon any other than friendly terms with Elma? After I offended the prisoner at the bar, who she thought was an Adonis, I never spoke to her again.

Henry Reynolds and *John Benson* testified that deceased was modest and discreet and of a cheerful disposition.

William Anderson. I am the prisoner's apprentice. Did not think he was any more attentive to Elma than to Margaret and Hope. He said to me one day that he kept Elma's company not for courtship or dishonor but for conversation. He always slept with me, but one night he went down stairs in his shirt and did not return until morning. He slept as usual the night Elma was missing and the next two, but on the fourth he sighed out in his sleep, "Oh! Poor Elma."

Susanna Broad. I live opposite Ezra Weeks' lumber yard and on the night the deceased was lost, I heard the gate open and a sleigh or carriage come out of the yard about eight o'clock. It rumbled, had no bells on it, and returned again before long. I am sure as to the hour and month.

Catherine Lyon. On Sunday night a little after eight, before Christmas, I saw Elma Sands in Greenwich street at the pump near the door of the new furnace. There were a good many people passing and I could not say if anyone was with her. She spoke to me and I heard someone say, "Let's go," and she bid me goodnight and went on. About one-half hour later I heard a woman's cry from behind the hill at Lispenards, "Murder, Oh! Save me." I did not see Elma's face, but I saw her form and shape. Did not see any sleigh.

Margaret Freeman. On Sunday night before Christmas a sleigh overtook me on the upper part of Greenwich street. Two men and a woman were in it; they were laughing very loudly. When I reached home my watch was a quarter to eight.

Cross-examined. Have never seen Ezra Weeks' sleigh. It was not dark, but there was no moon.

William Lewis. On Monday morning before Christmas I discovered the track of a one horse sleigh about three hundred feet from the Manhattan Well. I passed the Sunday before and there was no track there. There was a board off of the well which left it open and there were tracks of people around it.

Cross-examined. The road is a bad one but I could have found the well in the dark.

Buthrong Anderson. On Sunday night before Christmas I was driving on Broadway street about eight thirty in the evening, and I saw a one horse sleigh at full gallop with two or three men and a woman in it. The horse was dark colored. I have seen Ezra Weeks drive a horse of the same size and color.

Joseph Stringham and *Joseph Cornwell* who were with Anderson in his sleigh corroborated him, but they thought the Sunday was December 10th, just after Thanksgiving.

Arnetta Van Norden. Live near the well. About eight or nine o'clock in the evening my husband heard a noise, and said it was from the well. I looked through my window and we heard a woman cry out from towards the well, "Lord have mercy on me, Lord help me."

Lawrence Van Norden. Am the husband of last witness. Heard the cry. I got up and looked out of the window. It was a clear night. I saw a man walking near the well. In a little time the cries stopped and I went to bed again.

Cross-examined. I live 100 yards from the well. There was snow on the ground. Did not see a sleigh. There is a red house a few yards from mine. I did not go to the well the next morning to examine it, nor did I mention what I heard and saw to anybody the next day.

Thomas Gray and *Samuel Smith,* two lads of 11 and 13 years, were called, but on being questioned by the COURT they were found not to know what an oath meant and were rejected, also *William Blanck* was rejected on account of his age, and because he was not able to tell the meaning of an oath.

Andrew Blanck. I am the father to William. He is 13 years old and cannot read. One day my son brought home a muff which he said he got in the well. Next day I went to the well but saw nothing when I looked in. I saw a good many tracks around it and one track from the well to the road.

Cross-examined. He found the muff on the Tuesday before Christmas and I went to the well on Christmas day.

Counsel asked the COURT to adjourn until the next day as it was now half past one in the morning. The COURT seemed to be disposed to sit on, but some of the jurors saying they could not keep awake, adjournment was ordered until next day.

April 1.

The Court assembled to-day, all the judges and counsel present.

Richard C. Skinner. Am a surgeon and saw the body after it was taken from the well. There were several bruises on it, but the neck was not broken. The marks on the neck might have been made by the hand. Do not know Mr. and Mrs. Ring. There were spots on the neck in a chain.

Cross-examined. I am not capable of judging what caused the spots.

James W. Lent. On the 2d of January last, I together with Mr. Page, had some business to do in breaking a horse, and we went up to Andrew Blancks and we dined there. While we were dining two persons, Mr. Watkins and Mr. Elias Ring, came there to get hooks and poles to sound the Manhattan Well for the body of a young woman who was supposed to be drowned. We got the poles and nails and went all together to the well which we uncovered. Page took the pole first and said he thought he felt her; I took hold then and thought I felt her too. Watkins drove in the nails, I took the pole and hooked the nails in her clothes and drew her up carefully to the top of the water. As soon as Mr. Ring saw her calico gown he said it was she, he knew the gown. She was so heavy now we could not draw her out by the nail and the little boy went for a rope to the next house, while I held her still. I put the rope under her and drew her up gently; she slew'd round

but there was not a thread of her clothes which touched either side of the well. When she was drawn up we laid her on a plank, and she appeared in such a situation as if she had been murdered.

Counsel for the prisoner. You are to tell what you saw, not what conclusion you made—that is for the jury.

Her hat was off, her gown torn open just above the waist, her shawl was off and her handkerchief and shoes were gone; her hair hung over her head. In lifting her up I found her head fell forward and when we lifted her a little back her head fell back again and again it fell to the right, which caused me to suppose her neck was broke. She had a white dimity petticoat on. I discovered on her right hand something like a kick, there was the scratches of sand upon her skin, some of which was knocked off and seemed to have been drove forward. Her stockings were torn at the toes; the right foot was bare and somewhat scratched; the scratches were on the upper part of the foot as if she had been dragged on the ground.

Did not see any bruises upon her face. The pole could not have injured her head. It did not touch her head. I was particularly tender with it—I hooked her in the skirt of her gown. Her arms were stiff, her legs were straight, but her neck was remarkably limber. She looked like a person who had been walking against the wind—flush, but not so much so as she appeared a few days later. Her appearance was horrid enough—her hat and cap off, her hair hanging all over her head, her comb was yet hanging in her hair, tied with a white ribbon; her shawl was off; her gown was torn open with great violence, and her shoes were off. I went to the police, and then with the officer to find the prisoner; we staid a little back till we saw the officer tap him on the shoulder; I then went up to him, he stood in the door. I says, "Is this the young man?" He replied, "Yes." I told him I was very sorry for his situation; I felt affected; I expressed it to him; he turned about and said, "It is too hard," and he dropped his head and said, "Is it the Manhattan well she was found in?" I said I knew not what well she was found in; I did not then know the Manhattan well—this was about half past three in the afternoon; however, I don't know exactly the time but by calculation. I suppose the body was found about 15 minutes after we had left Blanck's house.

A *Juryman.* Was there any mention made of the Manhattan well, in the presence of the prisoner before he asked the question? I did not hear any, I don't believe there was.

Mr. *Colden.* Were you present when he first saw the body—what did he say?

Prisoner's Counsel objected to this kind of evidence, but was overruled by the COURT.

In proceeding to the well he asked for his brother as counsel for him—when we came there, we found a great number of people collected—I stepped before him, and said—"Weeks, do you know that young woman that lies there a corpse?" He said, "I think I know the gown." "My young friend," said I, "that is not the question I ask you—is there no marks in that counte-

nance you know?" He turned himself and said, "I think there is."

Dr. *James Snedeker.* Am a physician and examined the body the second day after it was taken from the well: thought the left collar bone was broken. The neck was not injured.

Dr. *David Hosack.* Curiosity lead me in common with others to visit the body; it was exposed in a coffin.[16] I thought the spots on the body were the result of violence committed by a third person.

Elizabeth Osborn. I had a slight acquaintance with Elma Sands. On the 22d of December, I lent her my muff; she came to borrow it herself, and I observed that she was very neatly dressed, and she seemed to be very lively and very happy. The muff was brought home the day that she was found, and it appeared as if it had been wet.

The *Attorney-General* admitted that the muff was found some days before the body was discovered.

Mr. *Williams.* At the request of the Attorney-General, I had made an experiment in what time a man might drive a horse the most usual route from Ring's to the Manhattan well, and from there back again to Ezra Weeks' down Barley street. Although the roads were bad, it was done once in 15 minutes and once in 16, without going out of a trot.

Sylvester Buskirk. Was with the last witness at the time he spoke of, and corroborate what he said. Ezra Weeks' horse had stood in his stable for sale, and was a good horse in appearance.

Mr. *Cross.* Am acquainted with Ezra Weeks' horse. He is a very good one; will go a mile in 5 minutes.

Mr. *Colden* addressed the jury on the nature of circumstantial evidence, and read the following passage from Morgan's Essay, p. 208.

"Circumstantial evidence is all that can be expected, and indeed all that is necessary to substantiate such a charge. The prejudice entertained against receiving circumstantial evidence is carried to a pitch wholly inexcusable. In such a case as this it must be received, because the nature of the

[16] "To exhibit the body of a murdered person in the street seems strange to us, especially as there was no question of identification, and is an instance of the contrasts between the manners of a century ago and the present day. Whether this was a common occurrence it is not possible to say with complete assurance but it is certain that neither the witnesses nor anybody else spoke of it as strange or shocking. Dr. Hosack who was a leading physician of New York, seems to have gone to look at the body out of mere curiosity and quite as a matter of course. Such an exposure now in a public street is unimaginable." An American Myth. Henry Cabot Lodge. *The Outlook,* 26 Aug., 1911, p. 953. See also the evidence of Joseph Watkins, p. 33.

enquiry, for the most part, does not admit of any other; and, consequently, it is the best evidence that can possibly be given. But taking it in a more general sense, a concurrence of circumstances (which we must always suppose to be properly authenticated, otherwise they weigh nothing) forms a stronger ground of belief than positive and direct testimony generally affords, especially when unconfirmed by circumstances. The reason of this is obvious: a positive allegation may be founded in mistake, or, what is too common, in the perjury of the witness; but circumstances can not lie; and a long chain of well connected fabricated circumstances, requires an ingenuity and skill rarely to be met with; and such consistency in the persons who come to support those circumstances by their oaths, as the annals of our courts of justice can seldom produce. Besides, circumstantial evidence is much more easily discussed, and much more easily contradicted by testimony if false, than the positive and direct allegation of a fact, which, being confined to the knowledge of an individual, cannot possibly be the subject of contradiction founded merely on presumption and probability."

THE DEFENSE

Mr. Burr. Gentlemen of the jury. The patience with which you have listened to this lengthy and tedious detail of testimony is honorable to your characters. It evinces your solicitude to discharge the awful duties which are imposed upon you, and it affords a happy presage, that your minds are not infected by that blind and undiscriminating prejudice which had already marked the prisoner for its victim. You have relieved me from my greatest anxiety, for I know the unexampled industry that has been exerted to destroy the reputation of the accused, and to immolate him at the shrine of persecution without the solemnity of a candid and impartial trial. I know that hatred, revenge, and cruelty, all the vindictive and ferocious passions have assembled in terrible array and exerted every engine to gratify their malice. The thousand tongues of rumor have been steadily employed in

the fabrication and dissemination of falsehoods, and every method has been taken to render their slanders universal. We have witnessed the extraordinary means which have been adopted to enflame the public passions and to direct the fury of popular resentment against the prisoner. Why has the body been exposed for days in the public streets in a manner the most indecent and shocking?—to attract the curiosity and arouse the feelings of numberless spectators. Such dreadful scenes speak powerfully to the passions: they petrify the mind with horror—congeal the blood within our veins—and excite the human bosom with irresistible, but undefinable emotions. When such emotions are once created they are not easily subdued.

It has happened in this case, that there have been attempts made to call up public sensibility, to excite resentment against this unfortunate man; in this way, gentlemen, the public opinion comes to be formed unfavorably, and long before the prisoner is brought to his trial he is already condemned. It is not to be supposed that these rumors can have any weight with a court of justice, but no man is altogether above being moved by such reports—and it requires some fortitude to withstand them; but now having heard the whole which can be said, you are prepared to determine whether the witnesses have always spoken with candor, or whether they have not spoken from temper, hatred and revenge.

We rely on it at first that there is nothing from which a discreet jury can condemn the prisoner; in the very commencement of the business it is involved in doubt. Notwithstanding there may be testimony of an intimacy having subsisted between the prisoner and the deceased, we shall show you that there was nothing like a real courtship, or such a course of conduct as ought to induce impartial people to entertain a belief that marriage was intended; for it will be seen that she manifested equal partiality for other persons as for Mr. Weeks. It will be shown that she was in the habit of being frequently out of evenings, and could give no good account of herself; that she had at some time asserted that she

had passed the evening at houses, where it afterwards appeared she had not been. We shall show you that if suspicions may attach anywhere, there are those on whom they may be fastened with more appearance of truth than on the prisoner at the bar. Certainly you are not in this place to condemn others, yet it will relieve your minds of a burden. There will be two modes of giving a solution—first, that the deceased sometimes appeared melancholy, that she was a dependent upon this family, and that a gloomy sense of her situation might have led her to destroy herself. As to the incident of the sleigh, we shall account for his whole time during that evening, except about fifteen minutes, which was employed in walking from one house to another; and we shall show you, that the whole of his conduct has been such, as totally to repel the idea of guilt. It will appear, that at ten o'clock the same evening, he supped at his brother's perfectly tranquil. The story, you will see, is broken, disconnected, and utterly impossible. We shall show you that the sleigh of Ezra Weeks was not out that evening, indeed the testimony of the good old woman was such, as could not gain the least belief, especially when you see that in matters of date and time she was totally lost. It will be shown you that on this occasion there have been violent attempts, to inflame the public mind against the prisoner, and we shall bring these home to some of the witnesses. We hope you will pronounce them altogether unworthy of credit—for a man to forestall the public opinion, is to arrest the hand of justice and deserves the severest reprehension, and such conduct we shall fix on the witnesses.

We shall show you that the prisoner has been uniformly well spoken of, more highly esteemed than one of his years, not only for his deportment, but for his morals. That a man of such a character should be impelled, without motive, to the commission of so horrid a crime, cannot be believed. Much has been said about the appearance of guilt and terror in the prisoner when charged with the crime. But, gentlemen, no man is armed with so much firmness of nerves that

when charged with a crime, he will not discover great emotion; when, therefore, persons of little discernment come forward and say that they saw emotions of alarm and terror, no man however innocent as an angel, is safe; the emotions of surprise may be construed by the ignorant or the malicious into those of guilt. A man charged with heinous crime may even prevaricate; we shall show you the case of a young man, who, being charged with the crime of murder, even brought a young woman dressed to resemble the one he was charged with murdering—this was supposed to be a circumstance so conclusive of his guilt that he was convicted and executed, and afterwards the young woman was found to be alive. Even in this very city a case had occurred, not many years ago, a young man had been charged with the crime of rape. It is yet fresh in the minds of everybody. The public mind was there highly incensed, and even after the unfortunate man had been acquitted by a verdict of a jury, so irritated and inflamed were the people, that the magistrates were insulted, and they threatened to pull down the house of the prisoner's counsel. After that a civil suit was commenced for the injury done the girl, a very enormous sum given in damages, and the defendant was ignominiously confined within the walls of a prison. Now it has come out that the accusation was certainly false and malicious.

If this doctrine of presumptive evidence is to prevail, and to be sufficient to convict, what remorse of conscience must a juror feel for having convicted a man who afterwards appeared to be innocent. In cases depending upon a chain of circumstance, all the fabric must hang together or the whole will tumble down. We shall, however, not depend altogether on the weakness of proof on the part of the prosecution, we shall bring forward such proof as will not leave to you even to balance in your minds, whether the prisoner is guilty or not—from even that burden we shall relieve you.

But before we come to the testimony, on the part of the prisoner, it may be well to examine a little more into the nature of the evidence on the part of the prosecution. It

may be material to discover how much of this testimony which we have heard, is the effect of a prejudiced imagination; in cases, people relate first with an honest zeal to relate as an opinion, next as a matter of fact. The only material facts on which I would observe here, is the expression ascribed to the prisoner, of the Manhattan Well, but that circumstance will be satisfactorily accounted for, by proving to you that he had been previously informed that the muff had been found there, and it was therefore natural to inquire if the body was not found there also. If, gentlemen, we show you all this, you will be able to say, before leaving your seats, that there is nothing to warrant you in pronouncing the prisoner guilty.

WITNESSES FOR THE DEFENSE.

Demas Meed. Am apprentice of Mr. Ezra Weeks and live with him; take care of his horse and sleigh. On the Sunday night I locked the gate as usual and put the key in my pocket or on the mantel. Did not miss it in the morning, nor was anything mislaid. The eight harness bells were tied on as usual. Would have known if anyone had taken the horse and sleigh even for half an hour. It would have taken five to six minutes to have taken the bells off and put them on and ten to fifteen to harness up. After Mr. McCombs and his wife left, a little before nine, I went upstairs and saw Levi Weeks sitting in his room.

Lorena Forrest. Live next door to Mrs. Ring. About twelve o'clock on the 2d day of January Levi Weeks came into our house to buy some tobacco. This was the day Elma was found. I asked him if there was any news of Elma; he answered, "No." I told him I thought the Ring's family had for they seemed very much agitated. He went away and came back in about half an hour. I told him then that Mrs. Ring said that the muff and handkerchief had been found in a drain near Bayard's lane. He did not seem to change countenance. Nothing was said about the Manhattan well. Heard Croucher say that he came near the well the evening she was missing.

Joseph Watkins. Was present at the finding of the body. About the middle of September, Mrs. Ring being in the country, I imagined one night I heard a shaking of a bed in the second story where Elma's bed stood. Her bed stood within four inches of the partition. I heard a man's voice. I am very positive it was not Levi's voice. I said to my wife, it is Ring's voice, and the girl will be ruined. Didn't mention this to anybody until after Elma was missing. My room is next to Elma's.

Cross-examined. The partition between our rooms is plank, lathed and plastered. Made it myself. Was not certain it was

Ring's voice, but thought it was. Often heard that voice in Elma's room. Did not hear the voice after Mrs. Ring came from the country. Mrs. Ring came into our house one morning and said Elma was so sick since she was at your house last night. My wife said she was not there. Mrs. Ring often said that Levi was kind and friendly to everybody, not more so to Elma than to any of the rest. I once said to Croucher that I believed Ring had a hand in it. Asked Croucher where he was that night. He did not answer. The day she was laid out in the street, I saw Croucher very busy attempting to make people believe that the prisoner was guilty. Ring has a high sounding voice, Weeks has a low soft voice.

Captain A. Rutgers. Met Ring one Sunday afternoon and he asked me if I had heard of a muff being found any where. He said they were looking for a young woman who was missing, a relation of his wife's, who had been gone for a week. He said they supposed she was drowned and believed it was in a love fit. Had no idea that Mr. Ring thought it was murder.

Lorena Forrest. A day or two after Elma was found Croucher was at our house and said it was a very unfortunate thing that he had not come that way just at that time as he might have saved her life. He said he had come by that night.

Betsy Watkins. Live next door to Elma. She had a front bed chamber which was against my mother's. Mrs. Ring came into our house one morning and said her boarders had gone out without breakfast, that Elma had been sick all night, ever since she came from our house, and she thought it arose from her sitting over our stove. My mother replied that she had not been at our house. Have heard Mrs. Ring say that Levi was very kind to the family. She said that on the evening of the 22d, Elma went upstairs and she followed her up with a candle. She said Elma looked pale and she told her not to be frightened. She said she afterwards heard a whispering in the entry.

Doctor Prince testified to the appearance of the body and the bruises as did Dr. *Hosack* and Dr. *Mackintosh* and Dr. *Romayne.*

David Forrest. On the 26th Croucher came into my store to buy a loaf of bread. He said Ring's family was in great distress. His opinion was that the girl had made way with herself. On Friday Croucher came running into the store and said, "What do you think of this innocent young man now, there is material evidence against him and he will be hanged."

Ezra Lacey. Was a lodger in the house of Mrs. Ring, and was there the night Elma was missing. Levi Weeks was there about eight o'clock when I came away. Left Mr. Ring, Elma and him together. Do not know whether Mrs. Ring was there or not. Noticed no change in his countenance after Elma was missing. Thought he was more attentive to Hope than he was to Elma. One night after the disappearance of Elma I heard somebody say if Weeks should get clear by law, it would not be safe for him to appear in public, and Ring said he thought so too. I heard Ring say that if he should meet him in the dark he would not think it wrong to put

him aside if he had a loaded pistol.

William Dunstan. Last Friday morning, a man, I don't know his name, came into my store (*here one of the prisoner's counsel held a candle close to Croucher's face, who stood among the crowd, and asked the witness if it was he, and he said it was* [17]), he said, "Good morn-

[17] This simple incident has given rise to two different tales of a similar kind, both of which have gone into history, and have remained there unchallenged for nearly a century and have only recently been shown to be mere myths. In Parton's "Life of Aaron Burr" (p. 148) he says:

"He used to say that he once saved a man from being hanged by a certain arrangement of candles in a court-room. . . . As the trial proceeded, suspicions arose against the principal witness, and Colonel Burr became convinced that the guilt lay between the witness and the prisoner. . . . Hamilton had addressed the jury with his usual fluent eloquence, confining his remarks to the vindication of the prisoner, without alluding to the probable guilt of the witness. . . . Colonel Burr, in turn, rose. He set forth the facts which bore against the man, and then seizing two candelabra from the table, he held them up toward the witness, and exclaimed, 'Behold the murderer, gentlemen!"

"Every eye was turned upon the wretch's ghastly countenance, which seemed to wear the very expression of a convicted murderer. The man reeled, shrunk away, and rushed from the room. The effect of this incident was decisive. Colonel Burr concluded his speech, the judge charged, the jury gave a verdict of acquittal, and the prisoner was free."

In Hamilton's "History of the Republic of the United States," which deals largely with the life of Alexander Hamilton and which was written by his son, it is said (Vol. 7, p. 745): "An occurrence had taken place which greatly excited the sympathies of the inhabitants of the city of New York. The body of a young female was found in a public well, and a young mechanic of reputable character, who had been her suitor, was suspected of and indicted for the murder. Hamilton was engaged to defend him. A careful investigation left no doubt in his mind of the innocence of the accused, and his suspicions fell upon a principal witness for the prosecution. But the public feeling had been artfully directed against his client, and to overcome its passionate prejudices was a herculean task. The office of defending him was rendered invidious, and, fearing that his talents would rescue the destined victim from their grasp, Hamilton, when he appeared in the court of justice, was regarded by the multitude, in this, the only time of his life, with a dark and sullen animosity. He resolved not merely to secure the acquittal of his client, but to place his character beyond all suspicion. It would, in this view, be a great victory so to operate on the jury in the progress of the evidence as to supersede the necessity of summing up the case. To this object he bent all his efforts. The evidence was circumstantial with the exception of that of the witness who Hamilton felt convinced, was the criminal. After an exertion of all his logical powers in disentangling the web

ing, gentlemen, Levi Weeks is taken up by the High Sheriff, and there is fresh evidence against him from Hackensack." He then went away and as he went out he said, "My name is Croucher"; and this was all the business he had with me.

Hugh M'Dougall. I have been acquainted with this Mr. Croucher for some time, but never liked his looks. On January 2d, the day the body was found, he was extremely busy among the crowd to spread improper insinuations and prejudices against the prisoner, who was then taken; and among other things he told a story about his losing a pocketbook. This conduct I thought unfair, and I told him so plainly. "O but," says he, "there's the story of the pocketbook," and stopped there. Last Monday, while I was busy in my garden, he came to my shop; "Now," says he, "the thing has all come out, the thing is settled, there is point blank proof come from the Jerseys of a new fact." I told him I thought it wrong and highly improper that he should persecute Weeks in such a manner when he had a difference with him; that for my own part, I wanted some further evidence before I should condemn the man.

which had been wound around the accused, and in showing that the crime must have been perpetrated by another hand, the suspected witness was called to the stand. On his evidence the verdict would turn. The prolonged trial had extended far into the night; and when Croucher was sworn Hamilton advanced, placed a candle on each side of his face, and fixed on him a piercing eye. This was objected to; but the Court declared the extraordinary case warranted this procedure. Hamilton then remarked in the deepest tones of his voice: 'I have special reasons, deep reasons, reasons that I dare not express—reasons that, when the real culprit is detected and placed before the Court, will then be understood.' The audience bent forward in a breathless anxiety, every eye turning from the prisoner to the witness when Hamilton exclaimed: 'The jury will mark every muscle of his face, every motion of his eye. I conjure you to look through that man's countenance to his conscience.' Having thus fixed the impression, he pressed in a close examination the conscience stricken culprit, who plunged on from one admission to another, from contradiction to contradiction. The evidence closed. As Croucher withdrew from the stand the spectators turned away from him with horror; and the jury acquitted the young mechanic without rising from their seats. Doubts still hung over the accused, but the subsequent conviction of this witness of an execrable crime left little question of the justice of Hamilton's suspicions."

Morse in his Life of Hamilton repeats and accepts the incident as true, as does Lodge in his life of the statesman, though the latter author rejected the Burr claim as related by Parton. But in an article published in May, 1872, in *Harper's* Magazine, "The Manhattan Well Murder," both stories are shown to be improbable; and in "An American Myth" (*The Outlook,* 26 Aug., 1911), Mr. Lodge acknowledges his mistake and shows both claims to be absolutely without foundation.

Timothy B. Crane. Lodged at Ring's before the girl was missing. Elma was very melancholy. Thought Levi paid as much attention to Hope as to Elma. On Wednesday after she was missing was told that Levi was implicated. It seemed to make no difference in his behavior.

Cross-examined. Saw Elma take laudanum. She was sick about half the time I was there. Mrs. Ring told me she never saw Elma after she went upstairs.

John B. McCombs. Between six and seven on the 22d of December, my wife and I went to Ezra Weeks' house. We found Levi sitting there and he remained until eight o'clock. I am sure of the time.

Elizabeth H. Weeks, whose deposition was read by consent, swore that on Sunday night, the 22d of December last, she and her husband were at home. McCombs and his wife came in, and Levi was there and stayed until about eight o'clock. Saw nothing peculiar about his conduct.

Ezra Weeks. On Sunday, the 22d of December, my brother, Levi, came to my house about nine o'clock. I went to church and left him there; I dined that day at my father-in-law's, and did not return home till about 5 o'clock in the afternoon. Just as we had drank tea and were yet sitting at the table before we lit candles, my brother came in, and I believe in about half an hour afterwards Mr. and Mrs. McCombs came in, and my brother tarried till about 8 o'clock, whether a little before or a little after I can not say. Mr. McCombs and his wife sat about 20 minutes, as near as I can judge, after my brother went out. I lighted them down stairs and held the candle to light them all the way to Mr. Rhinelander's corner, it being very slippery and dark, cautioned them to take care. I came up again, just as I set down the candle, before I had time to sit down myself, Levi, my brother, came in to inquire about the business of the next day, as he had the charge of my shop, understanding the business as well as myself, and very attentive to it. I am seldom in the shop more than once a day. I attended to the business abroad, took dimensions of work on my memorandum, and gave it to my brother in writing; his business was to give directions to the journeymen for execution. It was a general practice of my brother's to call on me of an evening to consult me about business of the next day, and if company happened to interfere, if he did not stay till the company was gone, he seldom failed to come in again before he went to bed. That night he came accordingly; he ate a hearty supper; he was as cheerful as ever I saw him; tarried till about 10 o'clock, and I suppose, went home as usual.

On January 2d last, about two in the afternoon, Levi came and told me that Mrs. Forrest had told him that the muff and handkerchief was found in a well near Bayard's lane. I told him that I suppose it must be the Manhattan well. This place came first to my recollection, because I had furnished the wood materials for that well, and as my business often called me that way I rode past the well almost every day. Levi knew where the well was, but I do not think he was ever there until his arrest.

Charles Thurston. I have worked as foreman for Ezra

Weeks about two years. From the time the girl was missing I never saw any difference in the conduct of Levi.

A number of witnesses testified as to the good character of Levi Weeks.

Re-examination for the People.

Matthew Mustee. I saw a young man the Sunday week before the girl was missing with a pole in his hands.

Mr. *Colden.* Do you know Levi Weeks? Would you know the person you spoke of if you saw him? I don't know as I should.

Mr. *Colden.* Take the candle and look around and see if you can point him out. *Witness went near the prisoner and pointing to him said that was he.*

Prisoner's Counsel. Will you undertake to swear that is the man you saw at the well? I can't swear to it. The Sunday before the young woman was missing, I saw a young man sounding the Manhattan well with a pole. I went up to him and asked him what he was doing. He said he did the carpenter's work and wanted to know the depth of the water, and found it to be 5 foot 5 inches, 5-8 and 6 foot. He had on a blue coat and a red jacket.

Alice Ring being called and asked if the prisoner wore such a jacket, answered she had never seen him with one of this kind.

Mr. *Colden.* If the Court please we give up this point.

Several witnesses testified as to the good character of Alice Ring, and that Elma Sands was of a lively and cheerful disposition. A number of witnesses testified that they supped with Mrs. Brown on the birthday of her son, December 22d and that Croucher was of the party; that he came between four and five and remained until after ten.

This closed the evidence, 75 witnesses in all having testified and the hour being 25 minutes past two in the morning.

The *Counsel for the Prisoner*, now proposed to submit the cause to the charge of the court without argument. Mr. *Colden* wished that the Court would adjourn, as they had done the preceding night; he stated that he had not slept since the morning that the cause was opened, and had then been without repose forty-four hours; that he found himself sinking under this fatigue, and considering that the prisoner's counsel, who were to precede him would probably take several hours, it would be morning before he could begin his address to the jury—that really he had not strength to proceed further that night, and should therefore be under the necessity of assenting to the proposition of the other side, unless the Court would adjourn—he was anxious that the Court should do this, because he thought it important that the jury should hear observations on the testimony.

The COURT, however, said it would be too hard to keep the jury together another night without the conveniences necessary to repose, and they therefore could not think it proper, but would proceed.

CHIEF JUSTICE LANSING (to the jury): From the manner in which the trial had been conducted, I supposed that the arguments of the counsel would have afforded the jury sufficient time to adjust and arrange the mass of evidence which, in its progress, has been brought into view. But it has, unexpectedly, become my duty to charge you without the assistance of the argument of counsel which they have waived on account of the late hour. A minute detail, however, is not essential to enable you to determine on the case according to its justice, as the evidence applying to the points on which it ought to be decided, lie in a small compass—the question you have to decide involves considerations of great moment, both to the public and the prisoner—to the public as deeply interested in the detection and punishment of crimes of the atrocious nature of that with which the prisoner was charged; to the prisoner, as on your verdict depends his life and everything dear to the human mind. These observations are only pertinent so far as they may operate to stimulate your attention and prompt you to a dispassionate estimate of the evidence; they ought not to be permitted to influence you from pronouncing the result of your investigations according to the impressions they make on your minds, regardless of the consequences attached to their determination—your path of duty is clearly and distinctly traced—to find the prisoner guilty if in your consciences you believe him so from the evidence; to acquit him if you think him innocent. This matter has, in a considerable degree, excited the public attention; it has interested the passions of many, and a variety of reports respecting it have been circulated, some of which must, unavoidably, have been communicated to you. But by whatever motive prompted, they do not deserve attention, and they ought not to have attached to them the least consequence, or to mingle with the facts

disclosed by the witnesses—for the obligation you incurred when you became jurors, limits you to the evidence produced on the trial, and that only can justify the verdict you are called upon to give.

It is not pretended that positive proof of the commission of the murder by the prisoner is attainable, but it has been attempted to prove his guilt by circumstantial evidence, and if it can be established by a number of circumstances so connected as to produce a rational conviction that he was the perpetrator of the crime, it will be as much your duty to find him guilty, as if it was made out by direct and positive testimony. But there are points in which the circumstances attempted to be combined were not so satisfactorily connected as to enable you to pronounce the prisoner guilty: it is doubtful whether Gulielma Sands left the house of Elias Ring in company with the prisoner so as to impose it on him to account for the manner in which he had disposed of her; the testimony respecting the one horse sleigh, does not appear to be such as to justify a presumption, that the prisoner had personally any agency in it, for if the relation of Susannah Broad does not satisfy you, that the sleigh was taken out of the lumber yard of the prisoner's brother at or about the time Gulielma Sands disappeared, it must be evident that the relations of the other witnesses respecting a sleigh and the cries of distress heard near the Manhattan well could have no application to the prisoner. Then Mrs. Broad's testimony is confused as to the time, and indistinct and unsatisfactory as to circumstances. The prisoner appears to be a young man—and if it is fully proved that he had sustained a fair character, and that he was of a mild disposition—it is difficult to discover what inducement could have actuated him in the commission of the crime with which he is charged. The declarations made by the prisoner after he became an object of suspicion do not appear to be inconsistent with innocence. The witnesses produced on the part of the prisoner had accounted for the manner in which he spent the evening, excepting a few minutes—and from the account the medical gen-

tlemen, who had been examined, had given of the state of the corpse of Gulielma, soon after it was taken out of the well, it was very doubtful whether she had been exposed to any other violence than that occasioned by the drowning. Some intimation had been given in the course of the trial, tending to question the credibility of some of the witnesses, but it is not necessary to examine this point, for admitting all the circumstances related by the witnesses on the part of the prosecution to be stated without any disposition to discolor them to the prejudice of the prisoner, the court is unanimously of opinion that the proof is insufficient to warrant a verdict against him. With this general charge we commit the prisoner's case to your consideration.

The jury then went out, and returned in about five minutes with a verdict of NOT GUILTY.

THE TRIAL OF SAMUEL TULLEY AND JOHN DALTON FOR PIRACY AND MURDER, BOSTON, 1812.

THE NARRATIVE

On October 17, 1811, the American schooner *George Washington,* Uriah Levy, master, sailed from Philadelphia on a voyage to Teneriffe. Her crew consisted of Samuel Tulley, mate, John Dalton, Neal, Hopkins and Cummings, sailors, and John Owen, cook. She arrived safely at Teneriffe on December 13th, landed her cargo and took on board fourteen quarter casks of wine and $2,500 in specie. She sailed from there on December 23 and reached the Isle of May, one of the Cape Verde Islands, on January 4, 1812. The vessel came to anchor in the harbor, and, at three in the afternoon, the captain left to pay a visit to another ship lying in the harbor, directing the mate to send for him there at sun down. Neal and Hopkins came with a boat but the captain was not ready to leave, and he ordered them to return for him in an hour or so. They did so at eight o'clock and when they told him what they had heard the mate say, he looked at once for the *George Washington,* but saw that she had left the harbor. The next day he found the anchors in the bay and the cables cut. He never saw the vessel again.

Before Neal and Hopkins left the ship for the captain, Tulley, the mate, ordered them to hoist the sails, which they refused to do unless he told them what it was for as they noticed that the cables had been cut. He refused to say, but told them to hoist the sails and then he would give them the boat to go for the captain. They did so and then left in the boat. Owen, the cook, wanted to go with them, but Tulley would not let him. The men remaining on board were now only four; Tulley, the mate, Cummings, Dalton and Owen,

the cook. The ship immediately put to sea and for the next two weeks Tulley and Dalton were at the wheel alternately. Cummings, who was a foreigner, soon showed signs of fright at what was being done, and the day before land was sighted, was thrown overboard by Tulley and Dalton after a struggle.[1] The next day they scuttled the vessel, Tulley having distributed to Dalton and Owen a quantity of specie with the injunction not to tell anyone the truth, and all landed in a small boat on what proved to be the Island of St. Lucie. At first Owen told the story that Tulley had instructed him to tell; that the ship had been wrecked and that the captain had gone off in one boat with the other seamen and he and the rest in the other; but after a time he became uneasy and finally confessed the whole case to an American captain he met on the Island.[2] The three were arrested and handed over to the United States officer who took them to New Bedford, and finally to Boston, where they were committed to prison.[3] Captain Levy subsequently learning from the American Consul at St. Lucie of their arrest, went there and about $1,350 in specie and some of his effects which the prisoners had brought from the ship were returned to him.[4]

Tulley was a native of Pennsylvania, a man of fair education and a good seaman, having for most of his life followed that calling. He was forty-two years old. Dalton (or Heathcoat, which was his real name) was only twenty-two, of English birth, and uneducated. Owen was a negro.

On October 15, 1812, the Grand Jury for the Circuit Court of the United States for Massachusetts, sitting at Boston, returned indictments against Tulley and Dalton for (1) piracy; for (2) the murder of Cummings, and for (3) feloniously scuttling and casting away a vessel on the high seas. The government decided to prosecute them on the first indictment.[5]

[1] John Owen, p. 48.
[2] John Owen, p. 48.
[3] James Holmes, p. 46.
[4] Uriah P. Levy, p. 47.
[5] They were not tried for the murder of Cummings because there

The trial took place on October 28, 1812, before Mr. Justice Story and Judge Davis. The principal witness for the government was Owen the cook and the defense was that the ship had blown out to sea before the captain and sailors returned and that the act was not Piracy in law. The jury found both prisoners guilty, and after overruling a motion for a new trial they were sentenced by Mr. Justice Story to be hanged on December 10th.

An extraordinary incident, dramatic and inhuman, occurred on the scaffold. After being taken in a coach to the place of execution, the Marshal read the death warrant, and a deputy a partial confession which Tulley had written. The rope was then placed around the neck of Tulley and the bolt drawn. The officers then took Dalton, removed his collar, pinioned his arms, and drew the black cap over his head. At this awful moment the Marshal stepped to the front and after a bombastic introduction read a reprieve which had been sent to him by the President of the United States. A month later Dalton received a full pardon.

THE TRIAL[6]

In the United States Circuit Court, Massachusetts District. Boston, October, 1812.

seemed some doubt from the testimony of Owen (see p. 48) whether the killing of Cummings might not have been the result of an attack by him upon the other two, and, at all events, piracy was a capital crime just as much as murder.

[6] *Bibliography.* * "The Trial of Samuel Tulley and John Dalton on an Indictment for Piracy and Murder before the Circuit Court of the United States at Boston, containing the evidence at large, a sketch of the arguments of the counsel, and the charge of Hon. Judge Story on pronouncing sentence of death. Printed for the publisher, 1814," 43 pages. [There is a vignette on the title page of a man on a scaffold, the rope around his neck and his eyes bandaged. Around him stand armed soldiers and beyond a crowd of spectators.] This report is not catalogued elsewhere. The Library of Congress has a report of the trial in 32 pages, published, 1813, and the Harvard Law and New York Bar Association Libraries have a report published in 1812, 36 pages. See also, Life of Tulley, Executed at South Boston for Murder. 36 pages, Boston, 1812. Harvard Law Library.

HON. JOSEPH STORY,[7] } *Judges.*
HON. JOHN DAVIS,[8] }

October 28.

The Grand Jury had previously returned three indictments against the prisoners, one for piracy, one for the murder of George Cummings and one for feloniously scuttling and casting away a vessel on the high seas in violation of a law of the United States.

James T. Austin[9] and *Peter O. Thatcher* (the prisoners having no counsel) were assigned by the Court to defend them.

George Blake, United States District Attorney, for the government.

The prisoners were arraigned on the first indictment.[10]

[7] STORY, Joseph (1779-1845). Born in Marblehead, Mass. Graduated from Harvard. Member State Legislature, 1805. Speaker, 1811. Associate Justice Supreme Court of United States, 1811. He has been styled the creator of the jurisprudence of Admiralty, Prize and Patent law in the United States. Member of the Constitutional Convention of Massachusetts, 1829. Dane Professor of law (Harvard), 1829-1845. He was the author of many law books which have become legal classics. William Wetmore Story, the Sculptor, was his son.

[8] DAVIS, John (1761-1847). Born in Plymouth, Mass. Member of the State Legislature, of convention which adopted the Federal Constitution and State Senate, 1795. Comptroller U. S. Treasury, 1795. United States District Attorney, 1796. Judge United States District Court 1801-1847.

[9] AUSTIN, James T. (1784-1870). Prominent lawyer and author of Life of Elbridge Gerry. (See 2 Nat. Biog. Dict. 314.)

[10] The jurors for the United States, within and for the district and circuit aforesaid, upon their oath, present, that Samuel Tulley, late of the city of Philadelphia, in the district of Pennsylvania, mariner, and John Dalton, also of the same city of Philadelphia, mariner, on the tenth day of January now last past, with force and arms upon the high seas, near a place called the Isle of May, one of the Cape Verde Islands, and out of the jurisdiction of any particular state, they, the said Samuel Tulley and John Dalton, being then and there mariners of a certain vessel of the United States, being a schooner, called the *George Washington,* then and there belonging and appertaining to a certain citizen or citizens of the United States, to the jurors aforesaid as yet unknown; of which said vessel, one Uriah Phillips Levy, a citizen of the said United States, was then and there master and commander, piratically and feloniously did then and there run away with the aforesaid vessel called the *George Washington,* and with certain goods and merchandise, that is to say, fourteen quarter casks of Teneriffe

The Clerk of the Court asked them if they were guilty or not guilty? to which they severally answered, not guilty; and it was then demanded of them, how they would be tried? to which they said, by God and their country; and the clerk rejoined, God send you a good deliverance. After several challenges

wine, and two thousand Spanish milled dollars, being altogether of the value of five thousand dollars, which were then and there on board the vessel aforesaid; they, the said Samuel Tulley and John Dalton, during all the time aforesaid, being then and there mariners of the said vessel, and in and on board of the same on the high seas as aforesaid, against the peace and dignity of the United States, and the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Samuel Tulley and John Dalton, on the said tenth day of January now last past, then being mariners of, in and on board the same schooner or vessel called the *George Washington,* belonging and appertaining to certain citizens of the United States (to the jurors aforesaid as yet unknown), with force and arms upon the high seas aforesaid, and out of the jurisdiction of any particular State, near a place called the Isle of May, one of the Cape Verde Islands, in and on board the said schooner or vessel called the *George Washington,* whereof the said Uriah Phillips Levy, a citizen of the United States, then and there was master as aforesaid; the same schooner or vessel, and the tackle and apparel thereof, of the value of five thousand dollars, of lawful money of the United States, and certain goods and merchandise, to-wit, fourteen quarter casks of Teneriffe wine, of the value of one thousand dollars, of like lawful money, and two thousand Spanish milled dollars, of the value of two thousand dollars of like lawful money, of the goods and chattels of certain citizens of the United States (to the jurors aforesaid as yet unknown), then and there being in the said schooner or vessel, under the care and custody, and in the possession of the said Uriah Phillips Levy as master of the said schooner or vessel, then and there upon the high seas aforesaid, near the Isle of May, and out of the jurisdiction of any particular State, with force and arms as aforesaid, from the care, custody, and possession of the said Uriah Phillips Levy, piratically and feloniously did steal, take, and run away with. They (the said Samuel Tulley and John Dalton), then and there being mariners of the said vessel, and in and on board the said vessel, upon the high seas as aforesaid—against the peace and dignity of the said United States, and the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that after the commission of the said offences, to-wit, on the fifteenth day of July now last past, the said Samuel and John, the offenders aforesaid were first brought into the said Massachusetts district, and that the said Massachusetts District is the District into which the said offenders were as aforesaid first brought.

by the prisoners, the following were sworn to pass between them and the United States: William Stearns, of Salem, Foreman; Samuel Harrington, Worcester; John Clark, Cambridge; Jotham Lincoln, Hingham; Abraham Tuckerman, Boston; Hawkes Fearing, Jr., Hingham; Samuel Gates, Worcester; Solomon B. Chards, Benjamin Seaver, Josiah Seaverns, Roxbury; James Lewis, Isaac N. Field, Dorchester.

Mr. Blake told the jury that it was his painful duty to lay before them the law on which the indictment was founded and the evidence which would support the charge against the prisoners, and he gave them a general outline of what the government expected to prove.

WITNESSES FOR THE UNITED STATES

James Holmes. Brought prisoners at the bar, together with John Owen, a black man, from the Island of St. Lucie to the United States, by the authority of the Island; the first port we made was Martha's Vineyard. The three men were delivered to the civil authority, committed to prison in New Bedford, and afterwards brought to Boston.

Uriah Phillips Levy. Was the master and joint owner of the schooner *George Washington.* She was a new vessel, American registered, built in the State of Delaware, and had not been to sea till the voyage in question. On October 17, 1811, sailed from the Delaware, on a voyage to Teneriffe. My crew consisted of Samuel Tulley the mate, John Dalton a foremast hand—the prisoners; a sailor called Neal, Daniel Hopkins, George Cummings, and John Owen, cook. On December 13 we arrived at Teneriffe, landed the cargo, and took on board fourteen quarter casks of wine and $2,500 in specie. On December 23 sailed from Teneriffe to the Isle of May, one of the Cape de Verde Islands and arrived on January 4th. Place for anchorage was pointed out to me by an American captain who lay there, and the schooner was moored in about ten fathoms of water, by two cables. On January 9th at three o'clock, P. M. I went on shore and left all hands on board, directing the Mate to send the boat on board the brig *Lambert,* Captain Levi Joy, then laying there, at sun down. Joseph Neal and Daniel Hopkins came with the boat at that time. I ordered them to return and come again in an hour or two. At eight o'clock Joseph and Daniel came again; their first words made me look out for the vessel, but saw she had gone from the place she was moored, and have never seen her since. The next day I caused search to be made for the anchors, which were found and weighed. The cables were fastened to them, but both cables had been cut with some sharp instrument at the windlass.

Cross-examined. The anchorage was in an open road; there

is a strong current which is felt immediately on leaving the bay; the schooner was a good sailer, but required some pumping. The last time I saw the vessel, they had been swaying up the foresail; the topsail was in the cabin; the foreyards, gib-boom and foresail were on deck. The vessel might have been got ready for sea in five minutes; at the time there was only a moderate breeze, and all sail could have been set. When I first saw the schooner had gone, it was dark, yet light enough to have discovered her if she had been in the bay. No vessel was there capable of pursuing her. There was generally a heavy sea and swell running into the bay. I often left the schooner in care of the mate before. Dalton complained of being sick on the voyage, but always did his duty. Joseph and Daniel left the Isle of May with my consent for the United States. I have made careful inquiries for them, but have not found where they are. I sent circular letters respecting my loss to the United States and the West Indies, but have never obtained any information respecting the schooner. The American consul gave such intelligence respecting men detained at St. Lucie as induced me to go there, where I received from the commanding officer $1350 and my clothes, the balance being detained for expenses, Prisoners had left the Island before my arrival.

John Owen. Belonged to the *George Washington.* Whilst lying at the Isle of May, one day after dinner, the captain went aboard an American vessel lying there, and desired the mate to send the boat for him at sunset, which was done but the captain did not return, and desired the boat again to be sent for him, at eight o'clock. Being cook of the vessel I prepared supper at about eight in the evening, of which the mate, Samuel Tulley, partook. The captain not being arrived, the provisions were left waiting for him on the table, and I went to sleep. Some time afterwards I was called by Samuel Tulley to hold a lantern to the pigeon hole, through the cabin, on deck, in order for him to see by the compass how the vessel was lying, it being then still at anchor. I was called up again by the mate, as were all hands, and ordered to make sail, the mate declaring that she was drifted. Sail was made until one of the sailors, named Neal, said he would not hoist the sail for both cables were cut. The mate insisted. Neal and a man named Dan refused, unless he would satisfy them as to what he was going to do with the vessel. The mate refused, saying it did not signify, adding, after the sails are up I will give you the boat. The sails were accordingly hoisted by all hands and the mate gave the two men (Neal and Dan) the boat, in which, having put their clothes, they departed. I asked to go in the boat but the mate refused, declaring that no other person should quit the vessel. The mate continued at the helm nearly all night. The men remaining on the vessel were the Mate, Samuel Tulley; Jack, who is now here and calls himself John Dalton; George, and myself.

About two weeks were spent at sea. During the last part George became uneasy in his mind, fell from his appetite, and used to go and kiss the Mate's and Jack's

hands or feet. One evening when land was expected soon George went to Jack and asked him when the land would be seen. Jack replied "to-morrow," and George replied, "good-bye, you will not see me any more." Jack, who was steering, treated what George said lightly, asked him what was the matter, and said he was foolish; but George repeated the same things. I went below to sleep, leaving George sitting on one side of the deck and the Mate sitting opposite on the other side, on the hen coops. About eleven or twelve I heard a noise upon the deck and myself called for; came upon the deck, when Jack said that George was killing the Mate. The Mate and Jack together had George on the gunwale of the vessel, throwing him overboard. Was much confused and did not know what to do. Said it could not be and ran to the helm. The Mate and Jack threw George overboard, the Mate saying "Overboard he shall go at the risk of my life." The next evening land was seen and we lay to until morning. The Mate then had the long boat hoisted out, put into it the Captain's large chest and several other things with the trunks of Jack and myself. Made me get into the boat which was fastened to a line. The boat was then hauled up along side the vessel, and the Mate and Jack came into it. During the time I was in the boat the two men bored holes in the bottom of the vessel to sink her but she did not sink so long as I saw her. The Mate distributed to Jack and me dollars which belonged to the Captain; the Mate saying we must keep secret everything that had happened, and keep the money for ourselves. That evening the boat came near to the land, but being afraid of the reefs, we stood out to sea again and next day we found the land to be the Island of St. Lucie, West Indies. We went to the first house, it was inhabited by persons who spoke only French, and could not make themselves understood. The Mate and Dalton repeatedly enjoined me not to tell what had happened, but to say they had run afoul of a wreck and were cast away, that the Captain had taken one boat and they another. The Mate went to town. Dalton and I stayed till he returned with the harbor master, who took us in a boat, and rowed us round to the town. Dalton then went to one place to live and myself and the Mate to another. I continued to repeat the story I had been instructed in, but grew uneasy in mind at being obliged to lie to everybody and resolved to disclose the affair. I went one evening to Captain Taylor's, an American captain and told the truth as I now relate it. Thereupon we were all arrested, and brought here as prisoners.

Cross-Examined. When the vessel was drifting it was candle light, but the land could be seen from the deck. Dalton assisted in lowering down the boat, cannot say whether he asked for leave to go ashore or not. The night was dark. Cannot say what course they steered. During most of the night the Mate kept the helm, but when he left Dalton stood at the helm. Do not know if any attempts were made to put it back, but the next morning there was no land in sight. The cables must have been cut with an axe. George, the deceased, was a foreigner.

The morning before he died he gave me his earrings and breast pin and said he should not live to see land. Never heard the Mate or Dalton express regret. Never expended the money received of the Mate. Did not go into any company or place of amusement in St. Lucie. The money was taken from me by the officers of the government.

WITNESSES FOR THE DEFENSE

Captain Benjamin Harris. Am an experienced seaman. Have been at Cape de Verde Islands. There is a pretty regular trade wind there which blows off the coast, and very heavy rollers are frequent during the hurricane months, but not usual in the month of January. The anchorage in the Isle of May is very bad. Many anchors have been lost there which are apt to cut off the cables of vessels riding there. My own vessel was driven out in that manner at Bona Vista. When a vessel in found to be drifting an experienced seaman would in the first place make sail and endeavor to beat to the windward, and in moderate weather should not think it difficult to get back or to make the Island of Jago where the vessels usually touch.

Captain Michael Hopkins. Have heard and corroborate the evidence of Captain Harris. A vessel like the *George Washington* situated as it was and short manned might be driven off and find it difficult to return. When the vessel was found to have parted her cables it was seamanlike to make sail.

James T. Austin (*to the jury*). The defendants, gentlemen, are in your hands. If there exists a reasonable doubt as to the law or the evidence, that doubt will save them. Fortunately for our country, a scene like the present rarely presents itself in our courts of justice. I persuade myself, the times in which we live have not destroyed the sensibility which such a scene should excite. We hear, indeed, almost on every gale, the dreadful deeds of war and battle, and grow more and more familiar with death. Among the many who are falling around us, two lives like those of the unhappy men at the bar, may not be thought much addition to the melancholy catalogue. Yet, gentlemen, when the law, which is made for the protection of human life, deems it necessary, to put that life in jeopardy, not for any injury to the lives of other members of the community, but for a mere injury to personal property, there is much, very much, for a jury to consider. If by your verdict, the defendants should be

caused to pass through the dark valley of the shadow of death, they will at least have the consolation of knowing, that their fate has been sealed by an impartial and honorable jury. But if the reverse of this should be the case; if your verdict opens their prison doors, and restores to them a new existence, chastened by the dangers they have incurred, and bound to honesty by the perils they have passed, the reflection of having returned to them their lives, which the law this day puts into your hands, will be to you a source of the sweetest consolation, at that awful hour when your lives shall be required by the great Judge of nature. Gentlemen, the defendants are in your power: I can only repeat for them the humane wish of the law—God send them a good deliverance.

Mr. Blake. It is utterly impossible, under the circumstances which have been stated, that the schooner could have drifted by accident from her moorings, and equally so, that any other persons than the prisoners could have been instrumental in the perpetration of the crime. I call to your attention the strong and violent presumptions of guilt which the testimony of Captain Levy alone furnishes against the prisoners. From his testimony it is beyond contradiction, that the vessel had been at the Isle of May and that suddenly she departed, and had never since been heard of; that the mate and Dalton were on board, the mate having her in charge. That the captain's chest of clothes, and some of his money had been carried by the prisoners to St. Lucie, where they were found by Captain Levy, who received them from the hands of the legal authority. That the vessel was feloniously taken is also apparent from his testimony, because the fact to which he swears positively, that on examination the cables were found to have been cut, is irreconcilable with any other supposition. The testimony of Owen, the cook, is therefore not necessary, although in a case of this kind it is satisfactory to obtain all the information which the nature of the case admits. His statement is in affirmance of Captain Levy's, and is corroborated by it so far as both witnesses were capable of knowing the same facts. It is only an enlarged

and more circumstantial story to which he testifies. The captain gave the outline of the horrible picture, Owen filled up the dark particulars of the scene. In law, even an accomplice was admissible as a witness, and by every principle of common sense, his evidence would be credited if it was probable, consistent, and corroborated by facts independent of it, and known to exist. His statement of the departure from the Isle of May and arrival at St. Lucie was not only probably but certainly true; his story is consistent, clear, and uncontradicted in any of its parts; after an able and most ingenious cross-examination, nothing appears to make his statement in the least degree ambiguous or uncertain. He tells a plain, unvarnished tale of his whole course of life. The great advantage of a trial by jury is, that jurors have an opportunity of seeing the witnesses, and judging of the credit due them by the manner in which they testify. In this instance I leave it to you to determine whether you ever heard a more unembarrassed, and intelligent, and cautious witness; and whether he was an accomplice or not. It is impossible to resist the force of his testimony. But was he an accomplice? His own statement, and the circumstances he has related shew that he was not. He had, probably, no will of his own. In the most menial capacity, a mere drudge, necessary to the new masters of the vessel, but too insignificant to be for a moment consulted, he had no choice but to obey their commands. He was a man more sinned against than sinning; and as soon as he had an opportunity, evinced his regard for the laws of God and man, which he had seen so flagrantly violated, by voluntarily giving evidence to the first American captain whom he was able to meet, by means of which the defendants were arrested and brought to the bar of their country. In answer to the arguments urged by the counsel for the prisoners on the law, the government contends that every felonious running away with a vessel on the high seas, is a piratical act within the statute; and if the jury believes the testimony which has been adduced, the crime contemplated by law and charged in the indictment has been

perpetrated and the jury should not hesitate to give a verdict of Guilty.

Mr. Justice Story and Mr. Justice Davis severally addressed the jury. Each of them recapitulated the testimony, and stated the operation and effect of it, as well in favor as against the prisoners at the bar. On the question of law, which they said had been very properly raised by the Counsel for the defendants, they had bestowed as much attention as was possible during the course of the trial; and both stated explicitly their opinion that a felonious running away with the vessel, was a piratical act within the meaning of the act of Congress, and subjected the perpetrators to capital punishment. The prisoners had had a fair and patient hearing; the jury had paid close attention to the evidence, and the arguments which had been addressed to them. It was a question of evidence, and they were the sole and exclusive arbitrators. It was also a question to be settled by the judgment, and not by the feelings. The appeal that had been made to their sensibility might cause them to regret the obligations imposed upon them; but as jurors, the oath of God was upon them. They had a duty to do, which would be criminal in them to omit. They were bound as well by their allegiance to their country, as by their tenderness for the prisoners. This duty might be painful, but it was, nevertheless, imperious. If in their consciences they believed the defendants were guilty, they were bound to say so, and leave the consequences to Providence. Theirs was duty prescribed by Justice; the more delightful attribute of mercy was, by the law, placed in other hands; in hands which never failed to exercise it, where the circumstances of the case warranted the interposition of executive favor. A reasonable doubt would operate in favor of life—but the doubt must be reasonable; not the mere suggestions of fancy, and the airy creations of mere possibility, but a reasonable and conscientious doubt. To such, a juror was bound to listen; with such a doubt, he never ought to condemn. If such a doubt remained, the prisoners were entitled to an acquittal.

At 11 o'clock P. M. the case was given to the jury and the Court adjourned until the next day.

October 29.

The prisoners were brought in and the jury came into the box.

Clerk. Have you agreed upon a verdict? *Foreman.* No.

The COURT inquired if the jury required any further explanation of the law. *Foreman.* The jury does not agree that the facts in the case amounted to piracy.

The COURT repeated the substance of their former charge on this point and ordered the jury to withdraw for further consideration. The jury accordingly retired and in about three hours they came again into court.

Clerk. Gentlemen of the jury, have you agreed upon a verdict? *Foreman.* Yes.

Clerk. Who shall speak for you? *Jury.* The foreman.

Clerk. Mr. Foreman, rise and look upon the prisoners. Prisoners, look upon the foreman. Mr. Foreman, what say you? Are the prisoners at the bar, guilty or not guilty? *Foreman.* GUILTY.

The Court then adjourned.

October 30.

The *Prisoners' counsel* moved for a new trial on the grounds of misdirection by the Court, and that the verdict was against the weight of evidence. The COURT reserved judgment.

November 9.

The COURT (STORY and DAVIS, JJ.), both delivering opinions, overruled the motion for a new trial.[11]

[11] The judgment of the Court is reported in 1 Gall 247; 28 Fed. Cas. 226 (U. S. v. Tulley, et al.). The Court held that to constitute piracy within the statute by "piratically and feloniously running away with a vessel," personal force and violence is not necessary. The guilty act is taking the vessel to convert it to his own use against the owner's will. "If," said Mr. Justice Story, "the captain and crew were all to confederate and run away with a ship with a piratical and felonious intent, there could be no doubt that it would be within the statute, yet in such a case there would be no pretence of personal violence or terror."

Mr. Blake addressed the Court in a solemn and impressive speech, in which he recapitulated the proceedings under the indictment, the verdict of the jury, and the law which denounced capital punishment on such conviction; and concluded, by stating it to be his duty to move, and he accordingly did now move the Court to proceed to pronounce the sentence of the law.

Mr. Justice Story. Samuel Tulley—John Dalton, you have been charged by the Grand Inquest of the United States, for the District of Massachusetts, with the crime of piratically and feloniously running away with the schooner *George Washington,* commanded by Uriah Phillips Levy, against the statute of the United States in such cases made and provided. You have been duly furnished with copies of the indictment, and also with a list of the jury, who, upon your trial, were to pass between you and the United States. You have had counsel assigned you by the Court, according to the benign provision of the law in capital cases. You have been arraigned on the indictment, and have severally pleaded not guilty. You have been tried by an impartial jury of your country, and at the trial had assistance and argument of able, and learned, and eloquent, counsel in your defence. You have been severally found guilty by the verdict of your peers. You have excepted to the opinions of the Court in matters of law at your trial. These exceptions have been fully considered by the Court, and upon mature deliberation have been overruled. You have now been brought into court to receive the judgment of the law, and the District Attorney has now, in your presence, moved the Court to proceed to judgment. What reasons have you now to show to the Court, why they should not pronounce sentence against you? (The prisoners remained silent.)

Before I proceed to the painful duty imposed upon me by the law, a cup of bitterness which I would most willingly put aside, I shall make a few remarks, which I hope will impress your minds with the most solemn conviction of the

turpitude of your offense, and with the mercy of God, incline your hearts to contrition and repentance.

The crime of which you have been convicted is of a most odious nature; it is willful, malicious, deliberate piracy. Among all civilized nations, it is esteemed as an offense which places you in enmity with the whole world, which banishes you from the hospitality and the protection of society, and consigns you to an ignominious death. In the present case, it has been attended with still more aggravated circumstances than usually attend the depredations of unauthorized plunderers of their fellow men. You were a part of a crew of a vessel navigated under the flag of the United States, entrusted by the owners with their confidence and property, and urged, by every honorable motive, to an honest discharge of your respective duties. The security of the commerce of the country, the maintenance of the good order of society, and the lives of thousands of your fellow citizens are intimately connected with the good faith and honesty of seamen. How have you repaid the confidence reposed in you by the esteem of your commander? You have been treacherous and deceitful. You have had no adequate temptations, and no apology for your deliberate violations of the law. You sought the darkness of night to cover deeds which would not bear the light. You had time to consider and reflect. The midnight stars shone with disastrous light on your wickedness; the deep silence of the hour, when nature pauses as upon the brink of dissolution, gravely warned you of your fate. The morning rose in its splendor to call you back to repentance; yet you returned not; yet you sought not the forgiveness of the world, by returning to the bosom of society, and repenting of your sin. Shall I stop or shall I proceed? One crime leads on the way to another, and every step in guilt is but a new incitement to urge another. One of your companions bowed down in spirit, overwhelmed with self-humiliation, approached you in the fullness of his sorrow, and repented and implored your mercy. Did your bowels yearn

with mercy towards him? Did you endeavor to soften his woe or seek with him the path of future peace, by a return to virtue? I dread even to remember the hateful tale! His tears and entreaties were of no effect. I would not willingly accuse, much less would I, unheard, condemn you. The hour of his fate drew nigh; in the deep gloom of the night there was a most foul and unnatural murder. You heard his dying groans; you saw his last struggle; you took his lifeless corpse and plunged it amid the sullen waves. The ocean received him to its bosom, and returned back its short but awful murmurs. Were you guilty of this atrocious crime? I will not say; let your own hearts and consciences declare. The morrow saw no tears and no contrition. The deeds of night were but the precusors of a new destruction. The vessel was herself the next object of ruin; and she was wantonly scuttled and left to sink to the bottom of the sea. Foul and deliberate falsehoods closed the horrible history of your crime.

Yet though these transactions were veiled from human eyes, think not that they escape the all seeing eyes of that Being who createth and governeth the universe. At that solemn hour when deep sleep falls upon the sons of men, his ever watchful mind is awake. When darkness surrounds the plunder of the public pirate, he is ever present and marks the wanderings of wickedness. When murder riots in supposed security, he hears the voice of dying innocence, and His own right arm shall avenge the deep damnation of the deed.

I would not willingly afflict you in your fallen condition, but I must awake your consciences to an awful sense of your impending fate. You are now soon to be cut off from life; and those cheering beams which now surround you, will soon be shut from your sight. The grave will become your cold and solitary residence, and the places that now know you shall know you no more. You are in the bloom and vigor of your days, yet society has found it necessary to arrest them, and to send you, with all your imperfections on your

heads, to another world. Think, oh think, after what has happened, how can you appear before that dread tribunal, and that Omnipotent Judge who searcheth the hearts, and trieth the reins of all men. From his sentence there is no appeal, and before him you must soon appear to render an account of all the deeds done in the body. There can be no concealment or shelter there; the accusing spirit of conscience will rise in judgment against you, and the voice of your poor unfortunate brother will be heard from the very depths of the ocean. Let me entreat you, tenderly and earnestly entreat you, as dying sinners, to turn from your wicked thoughts, to ponder on the errors of your ways, and with penitence and humiliation to seek the altars of our holy religion. Let me entreat you to pray for mercy and forgiveness from that righteous God, whom you have so justly offended. The time, perhaps, may not be too late. The glory of Christianity may yet brighten your declining days, and the Spirit of Redeeming Grace may drop a tear on your sins and blot them out forever. I now proceed to pronounce the awful sentence of the law upon your crime

Whereupon all and singular, the premises being seen, and by the said Judges of the said Court here fully understood—it is considered by the Court here, that the said Samuel Tulley, John Dalton be, and they hereby are severally deemed, taken and adjudged to be pirates and felons;—and that they, the said Samuel Tulley and John Dalton, and each of them, be hanged by the neck until they, and each of them, be dead. And it is further ordered and considered by the Court here, that the Marshal of this district do, on peril of what may fall thereon, cause execution to be done in the premises aforesaid, upon them, the said Samuel Tulley and John Dalton, on the tenth of December next ensuing, between the hours of ten o'clock in the forenoon, and three in the afternoon of the same day; and that they, the said Samuel Tulley and John Dalton, be now taken from hence to the gaol in Boston, in the district of Massachusetts, from whence they came, there, or in some other safe and convenient prison within

the district aforesaid, to be closely kept until the day of execution, and from thence, on the day appointed for execution as aforesaid, to be taken to the place of execution in Boston, aforesaid, there to be hanged as aforesaid. I recommend you to the mercy of Almighty God, before whom we shall all one day appear, and I pray that he may succor and support you in the hour of trial, and I now bid you an eternal farewell.

THE EXECUTION

On December 10th at eleven o'clock, prayers were offered in the State Prison, and the convicts taken under care of the Marshal and his officers, and conducted to the place of execution, at South Boston. When the prisoners had ascended the scaffold, the Marshal read the death warrant. Tulley then wished to read a paper which he had prepared, but his strength failing him, he desired one of the Deputy Marshals to read it for him (as his dying words), as follows:

"As a man and criminal now going out of this world, I do think it my duty to acknowledge that I have been guilty of taking, and assisting to take, the property which is mentioned in the first Indictment, but the murder, which was charged in the second Indictment, I do not see that I am any ways guilty of, although it was plead so hard against me, and I have reason to believe was the means of my being condemned; but if not, I acknowledge the justice of my sentence; but if other ways, I pray that the Almighty God will forgive those who have done me this wrong, and I freely forgive them from the bottom of my heart, as I hope the Almighty God will forgive me, not only this, but all the sins and wickedness that I have done in the world. This crime, for which I now suffer, is a horrible crime to think upon, and I beg that it may be a warning to everyone that may hear of it, or witness my sad fate. And I do think that it is my duty to express, with gratitude, my sincere thanks to the Marshals, and to other gentlemen in whose hands and charge I have been since I first came to Boston, and particularly to the Wardens and Keepers of the State Prison in Charleston, and Col. Gardner in particular, for his kindnesses shown to me. I give my sincere and my hearty thanks to all the Ministers, and other pious people of different demoninations, who have assisted me with their repeated visits, and their good advice, their prayers, their sermons, and their pious and godly books, to bring me to a due sense of myself, and to open my blind and wicked heart, and to soothe my sorrows, to bring me to true repentance for all my sins and wickedness, and to prepare

me to meet my awful sentence and death, and to meet the Almighty God who gave me my existence, and has been my whole support through this veil of life.—And undoubtedly it has been his good will and pleasure that I should suffer this side the grave, to expiate for the sins and wickedness which I have wilfully committed against so good and merciful a Creator; and to bring me to his only Son, Jesus Christ, the Redeemer and Saviour of the world, in whom I put my whole trust, hope and confidence, well knowing there is no other name under Heaven whereby I can be saved. Therefore I resign myself to his gracious disposal, with my body to the earth from whence it came, and my spirit to the Lord who gave it; and may the Lord Jesus Christ have mercy on my poor soul.—Amen."

The rope was first placed round the neck of Tulley, who ascended the platform and continued fervent in prayer, and in the presence of an immense concourse of spectators, was launched into the eternal world.

Dalton who was not desirous of saying anything at the place of execution, was then taken and his neckcloth removed, the rope fixed, his arms pinioned, the cap drawn over his eyes—an awful moment of anxiety was felt by the assembled crowd; one instant more, and he would have followed his companion to the world of spirits; when the Marshal stepped forward, and thus addressed the spectators:

"Friends and Fellow Citizens:

The good people of the United States, when they formed their national compact, wisely ordained among the duties assigned the President, that he should execute the laws with judgment and with mercy; while therefore he has left that man (pointing to Tulley) who is now suspended between heaven and earth, a spectacle for men and angels, to suffer the pains adjudged him by the law; he has been disposed in mercy to respite the sentence of this man (pointing to Dalton) for a few days, that he may gain that information which may perhaps incline him to extend further favors."

The Marshal then read a reprieve, by order of the President of the United States, till the 10th day of January, 1813. Within the time limited, Dalton received his full pardon, signed by the President, and issued under the great seal of the United States.

THE TRIAL OF FRANCIS MEZZARA FOR LIBEL. NEW YORK CITY, 1817.

THE NARRATIVE

A French artist in New York, Monsieur Francis Mezzara, was employed by a prominent lawyer to paint his portrait, but when it was finished it did not please either the subject or his friends, and he refused to take and pay for it. The artist was angry and sued the lawyer for the price, but a jury found that the refusal was quite justified and gave a verdict against him and he had to pay the costs in addition. To collect these costs a Deputy Sheriff went to his studio with an execution, but the artist told him that the only property he had to satisfy it was the rejected picture, and that he could levy on that if he wished. He did so, but a friend of the artist gave a bond for its production on the day set for its sale under execution. Thereupon the artist published the following notice in a New York paper.

"Curious Sheriff's Sale. We have been requested to mention that there will be sold, this forenoon, at public vendue, at No. 133 Water Street, a PICTURE *intended* for the likeness of a gentleman in this city, who ordered it painted. But as the gentleman disclaimed it, it remained the property of the painter, and is now seized by execution. In order to enhance its value, the painter, who is an eminent artist from Rome, has decorated it with a pair of *long ears,* such as are usually worn by a certain stupid animal. The goods can be inspected previous to the sale."

This was not very agreeable to the lawyer who on the day of the sale, which attracted a large crowd, tried to purchase it himself through an agent, but it was knocked down to a friend of M. Mezarra. Then the lawyer had the artist arrested for libel. His defense was that when the lawyer refused it he told him he could do what he liked with it; and

that what he had done was only to transform it from a portrait of the lawyer to a picture of Midas.[1] The jury did not take this view of the case, but found him guilty of criminal libel.

THE TRIAL[2]

In the Court of General Sessions for the City and County of New York, City Hall, August, 1817.

HON. JACOB RADCLIFF,[3] *Mayor.*
REUBEN MUNSON, *Alderman.*
JAMES HOPSON, *Special Justice.*

August 4.

Francis Mezzara was indicted for a libel published against Aaron H. Palmer. The indictment, which contained several

[1] "Midas, in ancient mythology, was a king of Phrygia, becoming a favorite of Bacchus, at the special request of the king, was endowed by that god with the power of turning all things which he touched into gold. He soon found the gift pernicious and worse than useless; and at his intercession the power was abridged by Bacchus. Afterwards Midas, in a contest between Pan and Apollo for excellence of music, adjudged in favour of Pan; when Apollo, as a punishment to Midas, caused Ass's ears to grow out of his head. Midas endeavoured to conceal his deformity by wearing red turbans; but his servant, who cut his hair discovered his ears, and, not daring to disclose the secret, dug a hole in the earth, and whispered therein in a low voice, "King Midas has the ears of an Ass." Trembling reeds sprung up in the place, which, on coming to maturity, continually emitted, in audible sounds, the words of the mighty secret which had long been buried." Note of original reporter.

[2] *Bibliography.* * "The New York City Hall Recorder containing reports of the most interesting trials and decisions which have arisen in various courts of judicature for the trial of jury causes in the Hall during the year, paticularly in the Court of Sessions, with notes and remarks, critical and explanatory, by Daniel Rogers, Counsellor at Law, New York." This work was originally issued in monthly parts of sixteen pages each; the first, which is called Vol. I, No. 1, was issued January 1816 and continued during the year in twelve parts. It ran on in the same way for the years 1817, 1818, 1819, 1820 and 1821 when it was discontinued. The last year's issue was not confined to New York City cases, but included a digest of reported cases from the States of New York, New Jersey, Massachusetts and Pennsylvania. Daniel Rogers was the reporter throughout, but there were several publishers, and there have been some reprints.

[3] RADCLIFF, Jacob (1764-1841). Born in Rhinebeck, N. Y. Grad-

counts, stated that Palmer, at and before the publication of the libel, was a counsellor and attorney at law in New York City, and a master in chancery and attorney, that the defendant, contriving him the said Aaron H. Palmer to bring into public hatred, ridicule and contempt, on the 30th day of July then last past, at the City of New York, falsely and maliciously did make, utter, and publish a certain picture, portrait, or resemblance of the said Aaron H. Palmer, with the ears of an Ass at the head of such picture or resemblance. And, also, for that the said defendant, further intending him the said Aaron H. Palmer into public hatred, ridicule and contempt to bring, did cause, and procure to be inserted in a certain public paper in the City of New York, called the *Republican Chronicle,* the following libel of and concerning him, the said Aaron H. Palmer:

"Curious Sheriff's Sale. We have been requested to mention that there will be sold, this forenoon, at public vendue, at No. 133 Water Street, a PICTURE *intended* for the likeness of a gentleman in this city, who ordered it painted. But as the gentleman disclaimed it, it remained the property of the painter, and is now seized by execution. In order to enhance its value, the painter, who is an eminent artist from Rome, has decorated it with a pair of *long ears,* such as are usually worn by a certain stupid animal. The goods can be inspected previous to the sale."

Hugh Maxwell,[4] District Attorney; *W. M. Price* and *Mr. Wilkin*[5] for the people.

uated from Princeton in 1783. Practiced law and became very young a Supreme Court Judge. Resigned and went back to practice. Was Mayor of New York, 1810-1811 and 1815-1818. Was one of the founders of Jersey City.

[4] MAXWELL, Hugh (1787-1873). Born in Scotland. Graduated from Columbia College. Assistant Judge Advocate General, 1814. District Attorney of New York City, 1817-1839. Collector of Customs, 1849-1852. Notable among the convictions which he obtained while Prosecuting Attorney were those of the banker, Jacob Barker, and the ship builder, Henry Eckford, both well known citizens, for conspiracy to defraud insurance companies. The poet Halleck wrote some lines in which he attacked Maxwell for his zeal in this case but the District Attorney was upheld by the general sentiment of the community. "History of Bench and Bar of New York City, 1897."

[5] WILKIN, James W. (1762-1845). Member New York Legislature, 1800. Representative in Congress, 1815-1819.

Mr. Emmett,[6] *Mr. Sampson,*[7] and *Mr. Ogden,*[8] for the prisoner.

Mr. Emmett moved for a special venire to summon a jury *de mediatate linguae,* under the statute, which motion was granted. On the return of the venire, a number of the jury were called who did not understand the English language. The Court directed these to stand aside, and that the sheriff should summon a *tales* of such as spoke the language, which was done and the jury selected and sworn.

WITNESSES FOR THE PEOPLE

Jonathan L. Brewster. Am a Deputy Sheriff. In July last, an execution in favor of Aaron H. Palmer against Francis Mezzara for $24 was put into my hands. I went to Mezzara, who represented that he had no other property to satisfy the execution except the picture, which he pointed out, and which I recognized as the likeness of Mr. Palmer. I levied on the picture, and John Cheneau, a friend of Mezzara, became surety for its delivery on the day of the sale, and it was retained by him. The sale took place on the 30th of July. On calling for the picture, I found it disfigured by the appendage of Ass's ears to the head. I carried it to the Ingrahams auction room where it was exposed for sale, in the presence of an unusual collection of people. Mr. Palmer having discovered just before the sale that the picture was disfigured, instructed me to have it bid as high as $30, for the purpose of having it destroyed, and a young man, a clerk in the auction room, bid to that sum for Palmer; but the picture was

[6] EMMETT, Thomas Addis (1764-1827). Born in Ireland. Was elder brother of Robert Emmett the Irish patriot executed in Dublin in 1803. Practiced law in that city and was a prominent member of the United Irishmen. Arrested as a conspirator and imprisoned for three years. Emigrated to New York in 1804 where he was at once admitted to the bar and rose rapidly to a front place in the profession. Attorney General of New York, 1812. A brilliant orator and advocate; he died of apoplexy, the stroke of which came on him in the court room while he was engaged in the trial of a case.

[7] SAMPSON, William (1764-1836). Born in Ireland. Became a Barrister but left his country on account of political troubles. Settled in New York City, 1806, and built up a large practice. Removed to Georgetown, S. C., 1825. Was a voluminous writer. His best known legal forensic effort was his speech for the defense in the Journeyman Cordwainers Case (Yates Sel. Cas.) See "William Sampson" by Irving Browne. 8 Green Bag. 313.

[8] OGDEN, David. Born in Morristown, N. J. Member State Legislature, 1814. Representative in Congress from New York, 1817. Died, 1829.

struck off to one of Mazzara's friends for $40, and the amount of the execution was paid to the sheriff by Mazarra in person.

Samuel Woodworth. I wrote the article in the *Republican Chronicle,* from instructions I received from two foreigners, who were strangers to me. One of them is the defendant. They had first spoken to Mr. Baldwin, the proprietor, who introduced them to me. They told me the story and I told it in my own language.

Nathaniel G. Ingraham. Am an auctioneer and sold the picture in presence of a large collection of people. Mazzara attended and appeared to be much elated. He advised me to take it and exhibit it in a more conspicuous place that it might be inspected by the people. The crowd became so great that I had to remove it to the back room.

Aaron H. Palmer. Became acquainted with Mazzara, who professed himself to be an eminent artist from Rome and who had been in this city about six months at the house of Baron Quenette, a French gentleman residing in this city. He represented Mazzara to me as a man of genius and an eminent connoisseur in the fine arts. In consequence of this I treated the prisoner with considerable attention, and invited him to my house to dine. While at dinner he proposed to draw my portrait and was very solicitous that I should sit for it saying that there was a very striking peculiarity in my forehead and that my head was a head of study—expressing it in French as *"une tete d'etude."* Later and after repeated importunity on his part I reluctantly consented to sit, and the portrait was made. He put it into a frame and carried it to the Academy of Arts, without my knowledge or consent. Previous to this, however, I had seen the picture in an unfinished state and expressed no particular disapprobation of the performance. After it had been exhibited in the Academy of Arts I inspected it more closely and thought it unworthy of an artist of eminence. My friends pronounced it to be a caricature. Was much displeased and disappointed; and mentioned my opinion and that of my friends, to the prisoner whom I met on Broadway. Tendered him the full charge for the painting, $65; and at his request gave him a certificate authorizing him to keep the picture. Mezzara considering his professional skill decried, and his feelings wounded, refused to receive the money and was very vindictive in his remarks alleging that I had wounded his self-love and that he would have satisfaction. In the afternoon he sent a young man for the money which I then refused to pay. He then began an action in the Mayor's court, to recover the price but failed. The evening the verdict was rendered against him he obtruded himself upon me on Broadway while I was conversing with Barent Gardenier and Isaac M. Ely. I told him if he considered himself aggrieved by the verdict I was disposed to do him justice and that he should have no cause to complain of my want of generosity. Mezarra then invited us to his room to inspect the picture. He was very abusive on finding that these gentlemen did not concur in his opinion respecting the likeness and as we were about leaving the room he took a chalk and sketched an

Ass's ears on the head threatening to paint them upon it and expose it on Broadway.

John W. Jarvis. Am a portrait painter. Saw the picture before it was disfigured, in Mazzara's room. It was an imperfect likeness and a blotch. Saw the picture again in possession of the prisoner who was exposing it, seemingly in a triumphant manner in Pine street, with the appendage of the Ass's ears. It was not a representation of Midas.

John Cheneau. (A Frenchman who testified through an interpreter.) After the failure of his suit, Mazzara told me he had a lawsuit against a man for whom he made the picture who had a judgment against him. The picture had cost him much time and money, he had paid $15 for a frame, and since it had become his own property, he must do the best he could with it. Did not hear from Mazzara that he was about transforming the picture into a Midas, nor did I know anything of the story of that king.

Maria Brunet. Am a Frenchwoman. When Brewster came to take away the picture, on the day of the sale Mazzara asked him if he could be injured by reason of the transformation mentioned and the Sheriff answered in the negative.

Maria McDowell. Am a Frenchwoman.

Mr. Emmett. Did the defendant at the time he was painting the Ass's ears not say he was painting a Midas?

Objected to by *Mr. Price*. *Mr. Ogden* contended, that the testimony was admissible as a circumstance to show a want of malice. The declaration being made at the precise time of the painting was a part of the *res gestae*.

The COURT decided in favor of the defense and the witness answered in the affirmative.

Thomas Blanchet. Called on Palmer with a bill for the painting. He told me he would see Mazzara on the subject; and I replied that it would be of no use, unless the money was paid.

Barent Gardenier. (Called by prosecution.) Toward the evening of the day of the trial in the Mayor's court, concerning the picture Isaac M. Ely and myself were conversing with Mr. Palmer, when the prisoner came up and joined us. He appeared much agitated, and invited the three of us to his room in Reed street, where he showed us the picture for our opinion. I did not express my approbation of the performance very strongly; and the language of the prisoner towards Mr. Palmer was intemperate. Before his visitors had left the shop, the prisoner said to Palmer, "Since this is not your picture you will not be offended at this." At the same time he took a piece of chalk, and sketched a pair of Ass's ears on the head of the picture; evidently with a design of wounding Palmer's feelings. Palmer however kept his temper, and seemed to smile, but I thought it gave him pain.

Mr. Price read the law on which the counsel for the prosecution intended to rely, from Starkie's "Law of Slander,"* and adverted to the authorities there cited.

* P. 549.

Mr. Sampson and *Mr. Ogden,* on behalf of the defendant. 1. That this was either a likeness of Mr. Palmer, or it was not a likeness. If a likeness, it was his duty to have paid the painter; if not, the appendage of Ass's ears on a picture not a likeness, was not a libel on him more than on any other individual. 2. The prisoner is not guilty of a publication of the picture. It was taken under an execution in favor of Mr. Palmer, and exposed by him for sale. The Sheriff, who in the transaction was the agent of Mr. Palmer, ought not to have taken the picture in its disfigured state on the day of sale; but should have resorted to his action on the bond given for its delivery. It was, in truth, not the same picture which had been originally seized, and the bond was, therefore, forfeited. 3. Palmer had relinquished all rights to the picture, had declared it was not his likeness, and had given the other express authority to dispose of it as he thought proper. 4. After this, the prisoner having expended much time and money in the performance had been subjected to an additional loss by the failure of his action, and having the picture thrown on his hands, had a right to make the best use of it he could. He actually intended to metamorphose the picture into a representation of Midas and was not actuated by any malicious or mischievous intention towards Mr. Palmer. Even if he had such intention, he was a stranger in our country, and unacquainted with the severity of our laws on the subject of libel.

Mr. Price. Although this was not a perfect likeness of Mr. Palmer, yet it so far resembled him that all his acquaintances knew he was the person whom the picture designed to represent. The appendage which was superadded, was manifestly intended to hold him up to public ridicule. After the prisoner had failed in his action, he determined to revenge himself on Mr. Palmer by affixing Ass's ears to the picture. In presence of Messrs. Gardenier and Ely, he manifested this determination, by chalking or sketching such ears, which he afterwards finished in oil. In the auction room, he endeavored to have the picture exhibited to the view of

the people, who had been drawn there by means of an advertisement, of which he was the author, published in a public newspaper. He exhibited the picture in a triumphant manner in the streets, after having bid it off at auction and paid the money. These acts sufficiently fastened on the defendant the charge of publication.

Mr. Wilkins. Where is this conduct to stop? What is to deter the defendant from exhibiting this picture in our streets again and again but the wholesome restraint of a verdict. And yet, gentlemen of the jury, what is to be done with the man? Should you acquit him, he still continues to hold up this respectable citizen, this counsellor and master in chancery, to public contempt and ridicule. Should you find him guilty, I am not certain but that, to revenge himself, he will draw your pictures with his Ass's ears! And I fear their honors on the bench will share the same fate! But still, neither their honors nor you, gentlemen, are to be deterred from the plain path of duty by such considerations. Palmer, by relinquishing all right to the picture, and leaving the prisoner at liberty to dispose of it as he thought proper, did not thereby license him to do an unlawful act; an act which could hardly have entered into the contemplation of any man. The manner in which this written certificate was obtained, shows a subtle contrivance and artifice on the part of the prisoner to avail himself of the license in justification of a libel, the publication of which he then meditated.

The MAYOR. Although the libel charged in the indictment is in its nature private, and, therefore, not important in a public point of view, yet the case, by reason of its peculiar nature, requirs your serious attention. Any publication, picture, or sign, made with a mischievous or malicious design, which holds up any person to public contempt or ridicule, is denominated a libel. You ought to consider that the reason of that verdict in the Mayor's court in favor of Mr. Palmer was that the jury did not consider the picture a proper likeness of Mr. Palmer for which he was bound to pay. On this subject, the verdict of that jury furnishes a guide to this.

Now it appears, that after the verdict was rendered in the Mayor's court, the prisoner, in presence of Mr. Gardenier and others, drew or sketched this appendage to the picture in chalk, and used intemperate language to Mr. Palmer. This is urged as a circumstance manifesting the mischievous intention of the prisoner. On the day of the sale, he caused an advertisement to be inserted in a public newspaper giving an account of the sale of the picture in its disfigured state. This advertisement furnishes, perhaps, the best evidence of his intention in the transformation of this picture. Afterwards we find, by the testimony of Mr. Ingraham, that the prisoner attended at the time of the sale, and wanted the picture exposed to the view of the people. From all the facts and circumstances in the case, it will be the duty of the jury to determine whether the prisoner in altering this picture, and thus exposing it, has not been actuated by motives of resentment and revenge. Should this be the opinion of the jury, he ought to be found guilty. A certificate has been produced in evidence on the part of the defendant, bearing date the 20th of May last, by which Mr. Palmer, at the request of the prisoner, gave him liberty to dispose of this picture as he thought proper. This certificate can not, in the opinion of the Court, amount to a license to publish a libel—this was not the object nor intention with which it was given. The prisoner, having originally undertaken to draw a correct likeness of Mr. Palmer, was bound to perform according to the undertaking. In the view of the Court, the verdict in the Mayor's court must have been rendered on the ground that this was not such a likeness as Palmer had a right to expect. The story of Midas was so distant, and had so little application to the case, that the Court does not think it proper to detain you on the subject.

The jury retired at about eleven o'clock in the evening, continued together during the night, and the next morning at about nine o'clock returned with a verdict of GUILTY.

The COURT sentenced the prisoner to a fine of $100.

THE TRIAL OF THE REV. JACOB GRUBER FOR INCITING SLAVES TO INSURRECTION AND REBELLION. FREDERICK COUNTY, MARYLAND, 1819.

THE NARRATIVE

On August 16th, 1818, a camp meeting was held in Washington County, Maryland, under the auspices and management of the clergy and laity of the Methodist Episcopal Church. At the first Sunday evening service, a sermon was preached by the Rev. Jacob Gruber, a native of Pennsylvania, presiding elder of his District, from the text "Righteousness exalteth a nation, but sin is a reproach to any people" (Pro. xiv, 34). In it he laid great emphasis upon slavery which he called a national sin. It is, he said, a reproach to our nation. We boast that we live in a free country and pity other people who are under the rule of Emperors and Kings—yet we have slaves around us whose sweat and blood and tears call to Heaven for relief. We have Bible and Missionary Societies to send the Bible to the heathen, but we do not teach it to the heathen in our own kitchens. We sell human beings like cattle; if they escape from us we offer rewards for their captures. You say we use our slaves well: but are we sure that our successors will and that some day our children and children's children may not be killed by a slave insurrection. Thus he spoke to the three thousand or more whites in the congregation. To the three hundred or more blacks who were present, he said: Of all people in the world you ought to have religion for that only can give you happiness and peace. Some of you have good masters, some of you have cruel masters, and you are slaves to them, slaves to sin, and slaves to the devil. But if you repent, no matter how hard your sufferings are in this world, it will soon be over, and you will have crowns and kingdoms of glory while your wicked masters will be sent to hell and eternal damna-

tion. One man who heard the sermon declared that he had also stated that he would not be surprised if the slaves of some masters were to cut their throats in their beds.[1] Another that he said he would not be surprised if the blacks should poison their master's children, for masters had no right to punish negroes who were born free.[2]

At the March Term, 1819, the preacher was indicted by the grand jury of Washington County, Md., for unlawfully, wilfully and maliciously instigating and inciting negro slaves, the property of citizens of the State, to mutiny and rebellion; to resist the lawful authority of their masters and owners and to raise insurrection and rebellion in the State. Alleging that the citizens of Washington County were prejudiced against him, he obtained a change of venue to Frederick County. The trial began on March 10th at Fredericktown and ended in his acquittal.

The great interest in this trial lies in the personnel of the counsel employed in it; two of whom were leaders of the bar of the State, and nation, and one reached the highest judicial office in the land. Luther Martin was then seventy-one years of age, had been Attorney-General of Maryland for thirty years; a delegate from Maryland to the Constitutional Convention of 1787, and had been counsel for the defense on the Impeachment Trial of Judge Samuel Chase, and the Treason Trial of Aaron Burr, and in 1818 he again became Attorney-General of Maryland. His last appearance in any case was in McCullough v. Maryland before the Supreme Court of the United States in 1819.

But who was the lawyer who opened and closed the case for the prisoner and who threw into his defense all the power of a great advocate and a great jurist? Who was it that declared to the jury that in all that he had said in his sermon the Rev. Mr. Gruber was right; that he would use the same language here in the temple of justice and in the presence of the ministers of the law, that the prisoner did in his sermon to the slave owners and their slaves? Who was it

[1] Ingram, p. 80. [2] Dr. Dorsey, p. 77.

in that County Court House on that day that denounced slavery as a blot on our national character, an evil imposed upon us by another nation while we were in a state of colonial vassalage; and asserted that every lover of freedom looked hopefully to the day when this stain would be removed? It was no less a person than Roger Brooke Taney, who thirty-seven years later was, as Chief Justice of the United States, to bring upon himself the criticism and the abuse of more than half a continent for his decision in the celebrated Dred Scott Case, that a negro was not a "citizen" within the Constitution of the United States. To-day the heat and passion of the old war days having gone, the correctness of the law as Taney laid it down is being acknowledged even in the Court over which he presided.[3] And does not this trial which has been forgotten for nearly a century clearly show that in delivering his celebrated judgment, Chief Justice Taney was speaking as a jurist expounding the law, and not as a partisan who sought to fix his views of slavery upon the nation?

THE TRIAL[4]

In the County Court of Frederick County, Maryland, March, 1819.

HON. JOHN BUCHANAN,[5] *Chief Judge.*
HON. ABRAHAM SHRIVER, } *Associate Judges.*
HON. THOMAS BUCHANAN,[6] }

[3] "The Dred Scott Case in the Light of Later Events," Morris M. Cohn, 46 Am. Law Rev. 548.

[4] *Bibliography.* * "Trial of the Reverend Jacob Gruber, Minister in the Methodist Episcopal Church at the March Term, 1819, in the Frederick County Court, for a misdemeanor. By David Martin, Minister of the Gospel. Fredericktown, Md. Published by David Martin, George Kolb, Printer, 1819." This is the only published account of this trial.

[5] BUCHANAN, John (1772-1844). Born in Maryland. After practicing law for a few years was appointed to the Supreme Court of Maryland and was Chief Justice of the Court of Appeals for thirty-seven years.

[6] BUCHANAN, Thomas, a brother of Chief Justice John Buchanan and associated with him on the bench for many years.

The Reverend Jacob Gruber had been indicted by the Grand Jury of Washington County, Maryland, for inciting negro slaves to mutiny and rebellion; for instigating them to resist their lawful owners and break the peace of the state and for endeavoring to stir up insurrection and rebellion in the state.[7]

[7] State of Maryland, Washington county, to-wit:
The jurors for the State of Maryland, for the body of Washington county, upon their oath present, That Jacob Gruber, late of the said county, clerk, being a person of an evil, seditious, and turbulent disposition, and maliciously intending and endeavoring to disturb the tranquillity, good order, and government of the State of Maryland, and to endanger the persons and property of a great number of the quiet and peaceable citizens of the said State, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and eighteen, at the county aforesaid, unlawfully, wickedly, and maliciously, intended to instigate and incite, divers negro slaves, the property of divers citizens of the said State, to mutiny and rebellion, for the disturbance of the peace of the said State, and to the great terror and peril of the peaceable citizens thereof. And that the said Jacob Gruber, in prosecution of his said wicked intention and purpose, and for the affecting, and accomplishment thereof, on the said sixteenth day of August, with force and arms, at the county aforesaid, unlawfully, wickedly, maliciously and advisedly, did endeavor to stir up, provoke, instigate, and incite, divers negro slaves, whose names to the jurors aforesaid, are as yet unknown, the property of divers citizens of the said State, and inhabiting in the county aforesaid, with force and arms, unlawfully, seditiously and wickedly, to commit acts of mutiny and rebellion, in the said State, in contempt and in open violation of the laws, good order, and government of this State, to the evil and pernicious example of all others, in like case offending, and aganist the peace, government and dignity of the State.

And the jurors aforesaid, upon their oath, do further present, That the said Jacob Gruber, being such person as aforesaid, and unlawfully, maliciously and wickedly, designing, intending and endeavoring, again to disturb the peace, tranquillity, good order and government of the said State, and further to endanger the persons and property of the quiet and peaceable citizens of the said State and to incite a great number of other negro slaves, the property of divers citizens of the State of Maryland, to disobedience, insubordination and rebellion, to and against their masters and to break the peace of the said State upon their said masters, to the great peril, annoyance and disturbance, of the quiet and peaceable citizens of the said State, afterwards, to-wit, on the day and year aforesaid, with force and arms, at Washington county, aforesaid, unlawfully, wickedly, maliciously and advisedly, did endeavor to stir up, provoke, instigate and incite, a great number of the said late mentioned negro slaves, whose names to the jurors aforesaid, are as yet unknown, the property of divers citizens of the said State and inhabiting in

He pleaded not guilty, and on his application based on the ground that he could not get a fair trial in Washington County, the venue was changed to Frederick County where the trial took place.

Luther Martin,[8] Attorney-General, and *Franklin Anderson*, District Attorney, for the State.

the said county, aforesaid, with force and arms, unlawfully, seditiously and wickedly, to resist the lawful authority of their said respective masters and lawful owners, whose names to the jurors aforesaid, as yet, unknown, and to break the peace of the said State upon their said respective masters and lawful owners, to the great damage of the said masters, in contempt and in open violation of the laws, good order and government of this State, to the evil and pernicious example of all others, in like case offending, and against the peace, government and dignity of the State.

And the jurors aforesaid, upon their oath aforesaid, do further present, That the said Jacob Gruber, being such person as aforesaid and maliciously and wickedly, designing, intending and endeavoring, again to disturb the peace, tranquility, good order and government of the said state, and further to endanger the persons and property of the quiet and peaceable citizens of the State of Maryland, afterwards, to-wit, on the day and year aforesaid, at Washington county, aforesaid, unlawfully, wickedly and maliciously, intended and devised to stir up, provoke, instigate and incite, divers other slaves, actually to raise insurrection and rebellion in this State, for the disturbance of the peace of the said State, and to the great terror, peril and disturbance of the quiet and peaceable citizens thereof, and that the said Jacob Gruber, in prosecution of his said wicked intentions and purpose, and for the effecting and accomplishing thereof, on the said sixteenth day of August, in the year aforesaid, with force and arms, at the county aforesaid, unlawfully, wickedly and maliciously, did endeavor to stir up, provoke, instigate and incite a great number of the said last mentioned slaves, whose names to the jurors aforesaid, are as yet unknown, inhabiting in the county aforesaid, actually to raise insurrection and rebellion in this State, in contempt and in open violation of the laws, good order and government of the said State, to the evil and pernicious example of all others, in like case offending, and against the peace, government and dignity of the State.

[8] MARTIN, Luther (1744-1826). Born in New Brunswick, N. J. and was graduated from Princeton in 1770. Attorney General of Maryland, 1778. Delegate to Continental Congress, 1784-1785. Member of Convention that framed Federal Constitution but opposed its adoption. Counsel for Aaron Burr and Samuel Chase in their celebrated trials. Judge Maryland Court of Oyer and Terminer, 1814. Attorney General again in 1818. Shortly after this he was stricken with paralysis, and his mind, already weakened by long indulgence in alcoholic stimulants, became

Roger B. Taney,[9] *Mr. Pigman* and *Mr. Martin*[10] for the Prisoner.

Mr. Anderson, in opening the case, told the jury that Mr. Gruber's offence was committed in the course of a sermon preached by him.[11] It is well known that slaves are property

almost a total blank. His vast and ever ready learning was obliterated and gone forever. The golden fruits of his professional labors, which had been cast upon him with unstinted hand, had been scattered with the same prodigality. With a heart ever open to an appeal for help, he gave recklessly to the deserving and unworthy alike. The State of Maryland, not forgetting his services and greatness in the past, and pitying his wretchedness in the present, in 1822 passed a law imposing a tax on every practicing Attorney of five dollars annually to be paid to trustees for the use of Luther Martin so long as he should live. Aaron Burr, hearing of his friend's calamity took him to his house in New York, and provided for his wants and cared for him until his death, which occurred on the evening of July 10th, 1826, and in the eighty-second year of his life. "Luther Martin as a Lawyer and a Lover," Robert F. Brent, Transactions Maryland State Bar Association, 1899. Another of his biographers speaking of the State tax for his benefit says, "But one lawyer throughout the state is on record as ever having objected to paying this remarkable tax and he was induced to withdraw his objections to its constitutionality before the case reached the Appellate Court." 2 Great American Lawyers (Lewis), 42.

[9] TANEY, Roger Brooke (1777-1864), born in Maryland, admitted to the bar and began practice in Frederick, Maryland, until 1823 when he removed to Baltimore. Soon after was appointed Attorney General of Maryland. Became Attorney General of the United States in 1831 and Secretary of the Treasury in 1833 and Chief Justice of the United States in 1836. Thus says one of his biographers did Taney acquit before a jury of the vicinage the man who came among them uttering incendiary words in the presence of slaves, who in most instances had their mistresses and masters at their mercy in case of a servile insurrection. 2 Great American Lawyers (Lewis), 90.

[10] This Mr. Martin was a young lawyer and this was his first speech in court. He may have been a relative of the famous Attorney General.

[11] The following are his notes of the sermon.

Proverbs XIV 34. Righteousness exalteth a nation, but sin is a reproach to any people.

I. What kind of righteousness exalts a nation or a person.

1st. Right principles, true sound doctrine, sentimental righteousness and leading truths. The fall of man, original depravity, redemption by Christ through His blood, quickened by the spirit, repentance, faith, obedience, holiness, rewards and punishments after the resurrection. These truths believed is what makes the head right,

according to our laws, and that masters are entitled to protection, and any attempt to incite slaves to insubordination and resistance to the lawful commands of their masters ought to be punished. But in the prosecution of our inquiry on this

or distinguishes a nation or person from the ignorant, superstitious and infidel, or heathen.

2d. A right spirit. Experimental righteousness. The spirit of the Lord shall come upon thee—a spirit of grace, of peace, of adoption, of love, of liberty: a right spirit, not of fear, but of power and of a sound mind—more excellent than the spirit of this world. This makes the heart right—the inside clean—the nation or person a Christian. If any man has not the spirit of Christ he is none of his. Ye are not in the flesh if so be that the spirit of God dwell in you.

3d. A right conduct. Practical righteousness. This makes the life right—without which all our sentiments, notions, experience and professions of righteousness will profit us little in a dying hour or at the bar of God. According to these scriptures, in every nation he that feareth God and worketh righteousness, is accepted with him. He that doeth righteousness is righteous, even as He is righteous. If ye know that He is righteous, ye know that everyone that doeth righteousness is born of him. The righteous shall eat the fruit of their doings. Be thou faithful unto death, and I will give thee a crown of life. They that have done good shall arise to the resurrection of life. The Lord will give unto everyone as his works shall be.

In these three particulars are comprised, all I think necessary to say about national and personal righteousness. Whoever lacks in either of these particulars is not scripturally, experimentally and practically righteous.

II. Sin is a reproach to any people, nation, or person.

Sin is the transgression of the law. The way of transgressors is hard. He that committeth sin is the servant of sin. He that committeth sin is of the devil. Sin is a reproach to any person, no matter what his rank is. If they are law makers, it is a reproach to them to break the laws they make at a great expense. Rulers—magistrates who are to execute the laws, and ought to be a terror to evil-doers; it is a reproach to them to be sinners. What! a drunken magistrate administer solemn oaths to others and be a profane swearer; shame on him, even if he was a Judge. Sin is a reproach to the rich; they have many advantages and ought to be thankful and religious good stewards, so as to be able to give a good account of their stewardship. A reproach to the poor; they have but little in this world, and ought to lay up treasure in heaven and be rich in faith. A reproach to parents and mothers; they ought to set a good example in their families—they and their house should serve the Lord. Sin is a reproach to the aged; they are on the brink of the grave, and ought to be ready to die. A reproach to the young; they ought to remember their creator, and seek the Lord early—not contract evil habits and lay a foundation for misery and destruction. Sin is a great reproach to professors of religion. What! name the

occasion, gentlemen, we must not forget that liberty of opinion and speech is the privilege of every citizen; and if Mr. Gruber had no criminal intent in his sermon, he has committed no offence. It is your duty and your province to judge of the intent from the facts that will be disclosed.

name of Christ and not depart from iniquity; profess in words that they know God but in works deny him; plead for sin and advocate the cause of Satan. The Lord says, shew my people their sins. All the righteousness or religion that some have is contained in their Prayer Book, in a form or ceremony—their devotion carried on by machines or mechanically. The organ sings praise, and if a machine could be invented to pray with, it would be an accommodation; it would save the labor and trouble of reading prayers.

But there are what might be called national sins which are a reproach.

1st. The sin of infidelity. Denying revelation. Christ and religion. The power of godliness.

2nd. The sin of intemperance. Tipling too common, which leads to drunkenness. If the free and common use of spirituous liquors is encouraged and continued, we may calculate on a nation of drunkards. Notice many of our young men or boys; they smoke and drink, sport, revel and gamble, get drunk and run fast to excess or riot. It would be an honor to them to learn to be sober.

3d. The sin of profaneness. Because of swearing the land mourns. A reproach to profane the name of the Lord—the sabbaths and ordinances of the Lord and his church. Can much dependence be put in the oath of a person who swears profanely in his common conversation oaths to the amount of dozens and scores in a day? Is such a being a friend to his country, while he breaks the law of God and men, or an honest man before he goes and pays the lawful fine for every profane oath?

4th. And last, National Sin, I shall mention is slavery and oppression. This in particular, is a reproach to our nation. We pity other nations who are under the yoke of Emperors and Kings, who tyrannize over, and make slaves of their subjects. We are happily delivered from such bondage; we live in a free country; we hold self-evident truths, that all men are created equal, and have unalienable rights, such as life, liberty and the pursuit of happiness. But are there no slaves in our country? does not sweat, and blood, and tears, say there are? The voice of thy brother's blood crieth. Is it not a reproach to a man to hold articles of liberty and independence in one hand and a bloody whip in the other, while a negro stands and trembles before him, with his back cut and bleeding? There is a laudable zeal manifested in our country to form Bible and Missionary Societies to send the Scriptures and the gospel to heathen nations. Would it not be well for some to be consistent? instruct the heathens at home in their kitchens, and let them hear the gospel likewise? What would heathen nations at a distance think, if they were told that persons who gave money liberally to send them the Bible and

WITNESSES FOR THE STATE

Dr. Frederick Dorsey. Was at the Camp-meeting, and heard the sermon. Mr. Gruber spoke of the tyranny of masters, and gave a dialogue of what was to pass in hell between masters and slaves upon hot grid-irons. Drew a comparison between Pennsylvania and Maryland. And said that the people in the

the gospel did not read, believe, or obey it themselves, nor teach their families to read that book; nor allow them time to hear the gospel of their salvation preached?

There is some difference even in this country. We Pennsylvanians think strange, and it seems curious to read the public prints from some States and find—For sale, a plantation, a house and lot, horses, cows, sheep and hogs—also, a number of negroes; men, women and children—some very valuable ones—also a pew in such and such church.—For sale, for life, a likely young negro, who is an excellent waiter, sold for no fault—or else for want of employment. (These are sold for cash—for four, five, six, seven or eight hundred dollars a head; soul and body together—ranked with horses, etc.) Look further and see—fifty dollars reward—one hundred dollars reward—two hundred dollars reward. What for? has an apprentice run away from his master? no—perhaps a reward for him would be six cents. A man that ran off has, probably, gone to see his wife, or child, or relations who have been sold and torn from him; or, to enjoy the blessings of a free country, and to get clear of tyranny. In this inhuman traffic and cruel trade the most tender ties are torn asunder, the nearest connections broken. That which God has joined together let not man put asunder. This solemn injunction is not regarded. Will not God be avenged on such a nation as this?

But some say, we use our slaves well; better than they could use themselves if they were free. Granted. But what assurance have you, or what security have they that your children, or those you will them to will use them as you do. May they not tyrannize over them after you are dead and gone, and may they not (the slaves thus abused) rise up and kill your children, their oppressors, and be hung for it, and all go to destruction together? the Lord have mercy on their souls. Such alarming and dreadful consequences may attend and follow this reproachful sin in our land and nation.

Is there not some chosen curse,
Some secret thunder in the stores of heaven,
Red with uncommon wrath, to blast the wretch
That traffics in the blood of souls.—Or,
Makes his fortune from the blood of souls.

To the Negroes.

Of all people in the world you ought to have religion. You have most need of it in order to enjoy some happiness or peace. Sin is a reproach to you. There is no peace to the wicked. Some of you have good masters; you ought to attend to religious duties; never be absent from family prayer when it is in your power to attend;

former state were surprised to see in the Maryland newspapers, advertisements of negroes for sale, with stock and lands. Negroes sold for life, without fault, none need apply without cash, the price of a soul,—two hundred dollars reward—one hundred dollars reward—fifty dollars reward, for a negro run away. A man gone to see his wife, or wife gone to see her husband. Fear of punishment on their return, perhaps, keep them from home. He said he should not be surprised if they were to poison your children, and all go to damnation together; to which there was a general response of Amen! Amen! He said it was true some slaves had good masters, but what security have fathers that children will use them well? May not the slaves you leave as property, rise against your children? What security have you that your children will not tyrannize over them, and the slaves poison your children? Masters had no right to punish. Negroes were free, they were born free. He quoted the Declaration of Independence, that all men are equal, and entitled to life, liberty, and the pursuit of happiness. He said, the husband had no right to punish his wife, neither has a master any right to punish his slave. I was disgusted and went off.

Mr. Pigman. What part of the discourse was addressed to the negroes? A considerable part of it.

What was the number of whites at the meeting? About three thousand whites, and from three to five hundred blacks.

What was the manner of Mr. Grubber? He preached with energy and zeal.

What was the text of Mr. Gruber? I do not recollect the text, but he preached the necessity of repentance to the blacks as well as the whites.

David G. Yost. Was at the meeting and heard the sermon. He said he was opposed to slavery as a man, and much more as a Christian. It was a reproach to the people of America to boast of their liberty while they held thousands in bondage. That there was a great inconsistency in holding the Declaration of Independence in one hand and a bloody whip in the other, and the blood streaming from a negro's back,

discharge your duty and it may make your situation more agreeable, even here, and certainly hereafter. Some of you have cruel masters; are slaves to them, slaves to sin, and slaves to the Devil, and if you die without religion you will be slaves in hell forever; miserable, wretched, poor and lost to all eternity. But if you repent and get converted; be made free from sin; serve the Lord faithfully unto death (however hard your situation may be in this world), your sufferings will soon be over; and you may have crowns and kingdoms in glory, where the wicked cease from troubling; where every tear is dry,

> And not a wave of trouble rolls
> Across the peaceful breast,

be happy in heaven forever; while wicked masters are turned into hell and damned forever.

literally cut to pieces. He spoke of advertisements in the Maryland papers, mixing negroes for sale, with stock, land, etc., and offering a reward for men, who, perhaps, from inhuman treatment had gone to see wife and children. He then addressed the blacks, and exhorted them to emancipate themselves from the services of the devil, and warned them if they and their masters lived and died in sin they would all go to hell together. Then he addressed the whites. You say you use them well. Granted. But how do you know your children, to whom you leave them, will use them well. They may tyrannize over them, and the slaves may rise up and poison, or cut the throats, of your children. In his address to the negroes he particularly exhorted them to get religion and seek the pardon of God for their sins, and be happy.

Dr. Hammond. Heard the sermon. He spoke in part of it of advertisements in the newspapers, in which men were offered for sale with cattle. Negroes were offered for sale without any fault. The cruelty of some masters were such, that he should not be surprised if the slaves would enter their bedrooms in the dead of night, and poison them, or cut their throats. He seemed to speak in a great passion. One could hear him half a mile distinctly. He said, negroes were sometimes whipt for trifling faults; that they could not serve God and man. The part of his sermon addressed to the black occupied ten or fifteen minutes.

Mr. Pigman. Do you remember that part of scripture where our Saviour told the Jews, and others who heard him, that they could not serve "God and Mammon"? I do not remember any such scripture.

Mr. Claggett. I was at the meeting. Mr. Gruber said, it was very inconsistent for people in this land, of boasting liberty, to hold the Declaration of Independence in one hand, and a whip, stained with human blood, in the other. That it was a common thing to see human flesh offered for sale in Maryland, with cattle and other stock. Horrid it was, he said, to the people of Pennsylvania, to hear of these things. He said, he should not be surprised if these negroes poisoned, or cut the throats, of the children of their masters, and all go to destruction together. There were about four or five thousand persons present, and out of that number about four or five hundred blacks. Did not hear the address to the blacks. I left the ground before that.

Daniel Schnebly. I got displeased with him early in his sermon, and left the ground; and returned again, and heard him in addressing the whites, say, he should not be surprised if they (the negroes) rose in the night and killed their masters, and entered their bed-rooms and poisoned their children. There was from five to six thousand people present, and out of them about from three to five hundred negroes. He preached with a good deal of warmth.

Dr. Finley. Heard Mr. Gruber preach the sermon. The general scope was to entreat the congregation to obtain religion. He preached with zeal and vehemence; but no more so on

that occasion than usual. I have heard him often, and he delivered his sermon in his usual manner. He said under these cruelties slaves might be faithful to one generation, but not to their descendants; that it would not be surprising, if the children to whom they were left, treating them with cruelty, should cause rebellion, and end in mutual strife, the negroes should cut their throats, or kill them; be hung for it, and all go to destruction together. He said, some slaves were treated as if they had no souls! Though they were black they still had human feelings, and many of them possessed keen sensibility. Those who tyrannized over the negroes might be in hell, while the negro thus used, if faithful, might be in happiness. It was degrading to humanity, to see human souls mixed with horses, cows, and stock, and offered at a public sale to the highest bidder; that it was inconsistent with the republican principles of this nation to hold the declaration of independence in one hand, while the bloody scourge was brandished over the trembling slave with the other.

Mr. Ingram. Heard the sermon and remember he said, that the slaves of some masters might enter their bed-rooms and cut their masters' throats. Did not pay must attention to his sermon. Don't remember the text.

Mr. Hogmire. Mr. Gruber said he should not be surprised, if slaves were to cut their masters' throats and poison their children.

Mr. Rench. Do not remember the text. I got so mad with Mr. Gruber for his severity on other sects of Christians that I do not remember much about the sermon.

THE DEFENSE

Mr. Taney. The statement made by the District Attorney, informs the jury of the interesting principles involved in the trial now pending before you. It is, indeed, an important case, in which the community, as well as the accused, has a deep interest. The prosecution is without precedent in the judicial proceedings of Maryland, and as the jury are the judges of the law, as well as the fact, it becomes my duty, not only to state the evidence we are about to offer, but to show the grounds on which we mean to rest the defence.

I need not tell you, that by the liberal and happy institutions of this state, the rights of conscience and the freedom of speech, are fully protected. No man can be prosecuted for preaching the articles of his religious creed; unless, indeed, his doctrine is immoral, and calculated to disturb the peace and order of society. And subjects of national policy may,

at all times, be freely and fully discussed in the pulpit, or elsewhere, without limitation or restraint. Therefore, the Reverend gentleman, whose cause I am now advocating, cannot be liable to prosecution in any form of proceeding, for the sermon mentioned by the District Attorney, unless his doctrines were immoral, and calculated to disturb the peace and order of society. The sermon, in itself, could in no other way be an offence against the laws; if his doctrines were not immoral, if the principles he maintained were not contrary to the peace and good order of society, he had an undoubted right to preach them, and to clothe them in such language, and to enforce them by such facts and arguments, as to him seemed proper. It would be nothing to the purpose to say that he offended, or that he alarmed some, or all of his hearers. Their feelings, or their fears, would not alter the character of his doctrine, or take from him a right secured to him by the constitution and laws of the state.

But, in this case, he is not accused of preaching immoral, or dangerous doctrine. That is not the charge contained in the indictment. The preaching of such a sermon is not laid as the offence. He is accused of an attempt to excite insubordination and insurrection among our slaves: and the intention of the preacher is the essence of the crime. On this indictment, no matter what doctrines he preached; no matter what language he used, yet his doctrines, or his language could not amount to the crime now charged against him. They would be evidence, I admit, to show his intention; but they would be nothing more than evidence, and could not constitute the offence itself. The intent of the accused is the great object of your enquiry. The charge is a grave and serious one. It is necessary, in order to support the prosecution, that the wicked intention, charged in the indictment, should be made out by proof. The guilty design is the crime imputed to him. You must be satisfied, before you can say he is guilty, that such was his intent; such the object he wished to accomplish; and that such were the pur-

poses for which his sermon was preached. For it is upon this sermon alone that this prosecution is founded.

It is true that the words used by him are evidence of his intention. But they are not conclusive evidence: nor are they the only evidence, from which the intent is to be gathered. His language is a circumstance from which you may infer his design. It is nothing more. And there are a variety of other circumstances equally entitled to weight, and equally proper for the consideration of the jury. For, when it is alleged, on the part of the prosecution, that a clergyman of a Christian society, while professing to be engaged in the high and solemn duties of religion, was, in truth, seeking to produce insubordination and insurrection among the slaves, and a detached part of his sermon, is relied upon as the proof of his guilt, the party accused, has a right to refer you, in proof of his innocence, to the general scope and object of his sermon: to the occasion on which it was preached: to the character of the congregation to whom it was addressed: to the opinions known to be held by the society to which he belongs: and above all, to the history of his own life, which, in this instance, would, of itself, be abundantly sufficient, to repel such a charge, bottomed on such evidence. Upon all these circumstances Mr. Gruber relies for his defence; and now I proceed more particularly to state them, as you will by and by hear them in proof.

You have already been told, that Mr. Gruber is a minister of the Methodist Episcopal church. And it is not necessary to tell you, that the religious society to which he belongs, is nearly as numerous as any other society of Christians in this state; and the equal of any other, in general order and decorum of their behaviour, in their moral deportment, and in their habits of obedience to the laws. It was, at a very early period of his life, that Mr. Gruber became a member of this society, and took upon himself, the duties of a minister of the gospel. In this vocation, he has faithfully labored, for more than twenty years, and he now fills a post of high rank, and great confidence, in his church; the reward of his fervent

piety and unwearied zeal. We shall also prove to you by a most respectable witness, a minister of the same church, whose duty it has often been, according to the discipline of that society, to examine into the conduct and character of the accused, that during the whole course of his ministry, the Reverend gentleman who is now on his trial, has sustained a character of spotless integrity.

It is well known that the gradual and peaceable abolition of slavery in these states is one of the objects which the Methodist society has steadily in view. No slave-holder is allowed to be a minister of that church. Their preachers are accustomed, in their sermons, to speak of the injustice and oppression of slavery. The opinion of Mr. Gruber on this subject, nobody could doubt. And if any slave-holder believed it dangerous to himself, his family, or the community, to suffer his slaves to learn that all slavery is unjust and oppressive; and persuade himself, that they would not of themselves, be able to make the discovery: it was in his power to prevent them from attending the assemblies, where such doctrines were likely to be preached. Mr. Gruber did not go to the slaves: they came to him. They could not have come, if their masters had chosen to prevent them.

In August, 1818, a Camp-meeting of the Methodist society was held in Washington county. At this meeting, it was the duty of Mr. Gruber to attend. He did attend, and from his official station in the society, the general superintendence, and direction of the meeting, was in his hands. On one of the days of the meeting, when the usual hour of evening preaching had arrived, the gentleman who had been depended upon to fill that duty, was prevented by indisposition. It was the duty of Mr. Gruber to provide for this unexpected emergency. He applied to several of his brethren, and requested them to address the congregation. But it so happened, that from different causes, not now material to be stated, he was unsuccessful in all his applications; and as nobody else could be found to supply the place of the sick brother, Mr. Gruber was compelled to do it himself. He

undertook the task without preparation, without time for reflection, and upon the sudden and unexpected call of the moment. I state these facts, so much in detail, because this sermon is the sole foundation of the charge against him. The language used on that occasion is the only fact relied upon to prove him guilty of the wicked intention of raising an insurrection among the slaves and converting this peaceful and flourishing state into a horrible scene of rapine and murder.

At the time this sermon was preached there were present about three thousand persons, of whom only about four hundred were people of color, as they are now generally called. These were separated from the whites, according to the custom on such occasions, and placed together behind the stand, from which the preacher addressed the congregation. Many of the most respectable gentlemen of Washington county, and many of the principal slave-holders were there, when the sermon in question was delivered. Yet it is at this meeting, thus constituted, that he is accused of conspiring against the peace of this state. It is, in his public address, to this assembly, that he is said to have developed his profligate designs. If he did mean to stir up the slaves to insurrection, it must, at least, be admitted, that he at the same time put the masters on their guard.

The address of Mr. Gruber occupied rather more than one hour. His subject was national sin; and after enumerating and rebuking some offences which, he supposed, people of this country to be but too prone to commit, he, in the conclusion of his discourse, spoke about fifteen minutes and no more, on slavery, and the treatment of slaves. It is not alleged, that he said anything in the preceding part of his sermon, calculated, in any degree, to support the prosecution. During all that time, he made no allusions to the condition of master or slave. And in the latter part of his discourse, when he did speak of them, and used the language on which this prosecution is founded, he addressed himself particularly to the masters. His appeal to his hearers, on this subject, was

directed exclusively to the whites. The impression was intended to be made on them. And when the language used by him, shall be detailed to you by the witnesses, you will find, that he could not have designed, in that part of his discourse, to influence the conduct of the slaves, but was obviously, and clearly, seeking to reform the hearts of the masters.

There may, and probably will be, a difference among the witnesses, as to the words used on this occasion, by the Reverend preacher. There will always be this difference, where there are many hearers. For some will be negligent, while others are attentive: some hear only detailed parts: others hear the whole: some are roused to attention, only when the angry passions are inflamed by an expected attack on some favorite opinion; and others, listen to the whole discourse, in the spirit of soberness and humility, for the purpose of receiving and profiting by the instruction. And in this case, a difference is more especially to be looked for, because the sermon produced a good deal of excitement, and much warm conversation among different persons, even on the grounds: so that the remarks of irritated individuals became intimately blended in the mind with the language of the preacher, and make it difficult, after the lapse of some months, for those who had listened carelessly, to separate the one from the other. But we shall be able to fix, beyond doubt, the language actually used by him. For we shall produce a most respectable witness, who listened attentively to the whole discourse, who was near the preacher during the whole time, and who, on the day afterwards, while it was yet fresh in his mind, wrote down the heads of the discourse, and wrote out, in full, what may be termed the offensive part of it. His statement, too, will be corroborated by the testimony of a multitude of other witnesses, concurring with him in all the material parts. We shall, therefore, confidently rely on it, as containing truly and accurately the words delivered. And from such a sermon, as the witnesses will detail, preached by such a man, on such an occasion, and under such circum-

stances, without any other act of his life, to aid the prosecution, I must be allowed to say, that no intelligent mind, free from the influence of passion and prejudice, can infer the guilty design charged in this indictment.

The learned District Attorney has said, that the language of Mr. Gruber was injudicious: that it was not calculated to do good: that it would necessarily irritate and offend the masters, and make the slaves more dissatisfied with their unhappy condition. And it may, in the progress of this trial, be argued on the part of the prosecution, that his principles on the subject of slavery were wrong; that the assertions of his opinions, to a congregation mixed, like the one to which he was speaking, was impolitic and dangerous, and likely to produce insubordination and disturbance among the slaves. Now, if all this could be truly said of this memorable sermon; if the Reverend preacher merited all these reproaches, yet, if you should believe that his motives were pure, if you think him innocent of any design to produce this mischief, he would, still, be entitled to a verdict of acquittal. For he is not now on trial, for preaching doctrines calculated to disturb the peace and order of society. That is not the offence charged in this indictment; and you are well aware, that a man indicted for one offence, cannot, on his trial, on that indictment, be convicted of another and a different offence. And if the learned Attorney for the state, shall be able to satisfy you that the opinions of Mr. Gruber on slavery, and the treatment of slaves, are unsound: that his arguments were injudicious and impolitic: that his language was inflamatory, and calculated to produce evil: still he will not have advanced one step towards the accomplishment of his object, until he can prove to you, that these opinions were uttered, these arguments were used, and this language employed, with the criminal intention, and for the wicked purpose laid in this indictment. I might, therefore, safely rest the defence on this ground, and yield to the Attorney for the state all the advantage he can derive from placing my client, in this respect, in the wrong. For the circumstances I have

before stated, will, in my humble judgment, put the integrity of his motives beyond all question. And whatever may be thought, or said, of the intemperance of his zeal, nobody, who listens to the proof, will be able to doubt the sincerity of his heart.

But the Reverend gentleman merits a defence on very different principles. The counsel, to whom he has confided his cause, cannot content themselves with a cold and reluctant acquittal, and abandon Mr. Gruber, without defence, to all the obloquy and reproach, which his enemies have industriously, and most unjustly heaped upon him. We cannot consent to buy his safety by yielding to passion, prejudice, and avarice, the control of future discussions, on this great and important question. He must not surrender up the civil and religious rights, secured to him in common with others, by the constitution of this most favoured nation. Mr. Gruber feels, that it is due to his own character; to the station he fills; to the respectable society of Christians in which he is a minister of the gospel, not only to defend himself from this prosecution, but also to avow, and to vindicate here, the principles he maintained in his sermon. There is no law that forbids us to speak of slavery as we think of it. Any man has a right to publish his opinions on that subject whenever he pleases. It is a subject of national concern, and may at all times be freely discussed. Mr. Gruber did quote the langauge of our great act of national independence, and insisted on the principles contained in that venerated instrument. He did rebuke those masters, who, in the exercise of power, are deaf to the calls of humanity; and he warned them of the evils they might bring upon themselves. He did speak with abhorrence of those reptiles, who live by trading in human flesh, and enrich themselves by tearing the husband from the wife—the infant from the bosom of the mother: and this I am instructed was the head and front of his offending. Shall I content myself, with saying he had a right to say this? that there is no law to punish him? So far is he from being the object of punishment in any form of proceed-

ing, that we are prepared to maintain the same principles, and to use, if necessary, the same language here in the temple of justice, and in the presence of those who are the ministers of the law. A hard necessity, indeed, compels us to endure the evil of slavery, for a time. It was imposed upon us by another nation, while we were yet in a state of colonial vassalage. It cannot be easily, or suddenly removed. Yet while it continues, it is a blot on our national character, and every real lover of freedom, confidently hopes that it will be effectually, though it must be gradually, wiped away; and earnestly looks for the means, by which this necessary object may be best obtained. And until it shall be accomplished: until the time shall come when we can point without a blush, to the language held in the declaration of independence, every friend of humanity will seek to lighten the galling chain of slavery, and better, to the utmost of his power, the wretched condition of the slave. Such was Mr. Gruber's object in that part of his sermon, of which I am now speaking. Those who have complained of him, and reproached him, will not find it easy to answer him: unless complaints, reproaches, and persecution shall be considered an answer.

I have now done with stating the testimony we are about to offer, and marking out the grounds on which our defence will be taken. But there is one other topic, on which it may be proper to remark, before I conclude the opening of the case.

The sermon in question, was preached in Washington county, and this indictment was found by the Grand Jury for that county. The cause has been removed to Frederick, upon the application of the accused. This circumstance, sometimes creates suspicions unfavorable to the character and standing of the party who applies for the removal. If he has been long an inhabitant of the county in which he is indicted, there may be some ground for these suspicions: but even then, they cannot be allowed, in the least degree, to affect the verdict. In this case, however, Mr. Gruber was as much a stranger in Washington, as he is in Frederick. He

never resided in that county, and therefore, has not shunned the decision of the men who knew him. He has removed his cause from one body of strangers, to be decided, indeed, by another body of men, who are equally unacquainted with him. His motive for doing so, I will briefly explain to you.

Mr. Gruber, as I have already told you, was a stranger in Washington, and consequently incapable of deciding how far, a fair and impartial trial, could be there expected. He, of course, submitted himself on this point, to the decision of his counsel, and formed his own opinions upon the advice and information derived from them. I am by no means prepared to say, that if he had gone to trial in Washington, his cause would not have been patiently heard, and impartially decided, by a jury of that county. But it was well known that great pains had been taken to inflame the public mind against him. The Grand Jury of that county had found this indictment to be true: and on that jury were men of high standing and great influence in the county. Many of the members of that body, I know personally, and respect highly; they are incapable, I am sure, of wilfully doing wrong. Yet they are like the rest of us, but men! frail men! and liable to be influenced by the impulse of passion or prejudice without being aware of it. Knowing, as I did, all the circumstances of this case, and being firmly convinced that there was no just cause for instituting this prosecution, the finding of this indictment, by a body of men so respectable as the Grand Jury, was of itself sufficient evidence to my mind, that the liberty and reputation of Mr. Gruber, ought not to be hazarded on a trial there. I so advised him, in the strongest terms; and if blame is to rest upon anyone, for the removal of the cause, I acknowledge that to me, and not to Mr. Gruber, it ought to be imputed. Yet, I cannot think, that the exercise of a constitutional right can be matter of censure against the client or his counsel: nor can it be a reproach to anyone, that he is willing to abide the verdict of a jury of Frederick county.

Rev. Mr. Sneathen. I heard Mr. Gruber's sermon. He first prayed for the safety, conversion and happiness of the whole assembly. Upon the point of slavery, he gave the good and bad masters their meat in due season. Kept up the distinction between good and bad masters. He admitted, that many masters used their slaves well, but then, he said, what security have they that their children will use them well? It is possible that their children may be tyrants,—the slaves may rise and kill their children. When he spoke of killing, it exclusively related to the next generation. He endeavored, to convince the good master that slaves were dangerous property to leave to children; that tyranny in the children might produce rebellion in the slaves, and mutual destruction might ensue. Mr. Gruber preached that day by accident. He did not appoint the meeting; and before he began, he labored very much with one of his brethren in the ministry, to preach in his place. He possesses a good general character; is very zealous and devout in the ministry. He is next in office to the Bishop, and of an unimpeachable moral character. In his address, to the blacks, he enforced on them repentance; exhorted them to religion, to obedience, and patience in the service of their masters. He told them, without religion they were slaves to their own lusts, slaves to their masters, and if they died in their sins they would be damned forever. When he adverted to the Declaration of Independence, he spoke of it as a national thing, and not to slave holders particularly, and said, it had been justly thrown upon this nation as a reproach, to hold the Declaration of Independence in one hand, and the bloody whip in the other.

THE COURT. How did you like the sermon? From prudent considerations I would not have preached in the same way, because, from his very frank manner persons might misrepresent him. My taste also differed from his, I should have advised a different manner and composition; but nothing escaped him that could induce me to believe for a moment, that he had a criminal intent. When Mr. Gruber spoke of the danger of mutual destruction between the children and slaves in the next generation, he offered up a prayer for them all; "the Lord have mercy on them."

Rev. Jeremiah Mason. Was at the Camp-meeting and heard the sermon. Righteousness was the first head of the discourse. Sin is a reproach to any people, was the next head. He dwelt considerably on the sin of infidelity, and with great labor on the sin of oppression, under which he considered, he said, the whole of involuntary negro slavery. He contended that involuntary negro slavery was a violation of the moral and natural law, and a great abuse of Christianity; that it was in violation of the sentiments expressed by the American sages, in the Declaration of Independence; that it was reproachful to this nation to hold that sacred instrument in one hand, and a rod stained with blood in the other. He spoke of the cruelty of advertising and selling human beings, mixed with cattle.

He said, it was usual to find in the advertisements on this subject, the owners stating to the public, that they (the negroes) were sold without fault. In that part of his address directed to the negroes, he was very severe on them, and told them, unless they repented and obtained conversion, they would be damned forever. He recommended to them obedience and entire and patient resignation to their condition. I being a Justice of the Peace, and hearing an accusation was to be stated against Mr. Gruber, I made immediate notes, after the delivery of the sermon of its principal heads. When he spoke of the danger of killing, he referred to the posterity of the present generation of masters. He said, in the mutual strife that might ensue between the negroes and the children of the present masters, there might be mutual death, and all be sent to destruction together. Then he made a pause, and said, the Lord have mercy on them.

THE COURT. Have you ever said, that you did not approve of the matter and manner of the sermon? I have said, from the temper of the congregation, I was fearful the sermon might give offence to some persons present, but I never intimated or thought there was anything criminal in it.

Rev. Jonathan Forrest. Heard the sermon. He spoke considerably on the beauty of righteousness, and the horror of sin in a national point of view. In his prayer, previous to preaching, he offered a fervent petition at a throne of grace, for the happiness, conversion, peace and quiet of the whole congregation. He discussed negro slavery as a national sin, as being contrary to the natural and moral law, contrary to the Christian religion, and expressly against that command of God, which directs us to do to all men, as we would they should do to us. He said, slaves were dangerous property for fathers to leave to their children. Children might tyrannize over them, mutual destruction might ensue, and all go to destruction together. When he spoke of the danger of killing, it was in reference to the next generation of men. In that part of the address directed to the negroes he exhorted them with great zeal to get religion, to seek pardon of God, to obey their masters and mistresses, to let their light shine before men, and perhaps, it might be a means of their getting their freedom, through some kind turn of Providence. He told the slaves, if they lived and died in their sins they would be damned forever. I was near Mr. Gruber the whole time he was preaching. Am confident he did not in any part of his sermon say, the negroes present were free born.

H. G. O'Neal. Heard the sermon. In the general scope of his sermon, he preached repentance towards God and faith in a Saviour. I do not remember his saying anything about poison. When he spoke of killing he referred to the next generation of men. He exhorted them to be obedient and submissive to their masters, and begged those who had pious masters to join them in devotion. There was about five thousand white persons present and perhaps from two to three hundred blacks.

Mr. Long. Heard the sermon. Remember Mr. Gruber said Pennsylvanians thought it strange that human beings were sold in Maryland at auction, with cattle and beasts. He said negroes were dangerous property for fathers to leave to their children, that children might prove to be tyrants, negroes might rebel, mutual destruction take place, and all go to destruction together.

THE COURT. Did he tell the negroes they were a degraded people? No.—He advised them to be obedient. He preached a mighty good sermon. It was the truth from the scriptures.

Rev. Lawrence Evehart. He said that it would be awful to account for holding slaves in the day of judgment. There was then a general response of Amen! Amen! after his address.

Rev. Samuel L. Davis. Heard the sermon. He was particularity severe on those engaged in the slave trade. He made use of a quotation to this effect,

Is there not some chosen curse,
Some secret thunder in the stores
of heaven,
Red with uncommon wrath, to
blast the wretch
That makes his fortune from
the blood of souls.

The address on this sin was principally directed to cruel masters, and traffickers in human flesh. After preaching to the whites he addressed the blacks, warned them faithfully of their own sins, preached to them the terrors of the law, exhorted them to obedience to their masters, resignation to their state. I considered the address to the slaves a complete antidote for anything that had gone before.

THE COURT. What do you mean by an antidote? Was there poison to be expelled? I suppose many masters present would be offended at the plain manner in which the preacher delivered the greatest truths; and I thought their wrath would be turned away when the accused warned the slaves so faithfully of their own sins, and exhorted them to obedience to their masters. That is what I mean by antidote. Did not think there was anything criminal in the sermon. Mr. Gruber said, many persons would contribute their money to support Bible societies, to carry the scriptures to heathens in foreign countries, who neglected to teach religion to the heathens in their own kitchens.

THE COURT. Remember you must state the truth. Sirs, I am on my oath, that is warning enough for me.

Mr. Yo. Heard the sermon. He endeavored to prove that slaves were dangerous property to leave to children. He said, slavery was horrid to him as a man and a Christian; it was a violation of the moral law, the law of Christianity, and contrary to the sentiments of the American sages, as expressed in the Declaration of Independence. He said, it was monstrous to see a people holding a scroll of liberty in one hand, and a bloody whip in the other.

Jacob Bowlus. Heard the sermon. He preached with great animation and zeal, and endeavored to convince the whole congregation, of the great necessity of repentance, of

piety and love of God. What he said about the danger of killing, or poisoning, referred to the next generation.

John Bowlus. Heard the sermon. He was very severe upon bad masters, and all persons concerned in that sort of commerce called the slave trade. He said, there was an awful responsibility resting on them for the day of judgment. He enforced Christian duties on the masters and slaves. He applauded the good master and the good slave. He said, good masters make good slaves, and good slaves make good masters.

Mr. Brazier, Mr. Hunt, Mr. Bealer, Mr. Blake, Mr. Middlekauff, Mr. White, and *Mr. Reynolds,* were also examined. All of them gave similar evidence to that of the previous witnesses, and heard Mr. Gruber deliver the sermon in question.

Rev. Frederick Stier. I know Mr. Gruber preached by mere accident. He called on me to preach with very pressing and anxious solicitation several times. I refused. He preached on that occasion with great reluctance.

Rev. Geo. Roszle. Have known Mr. Gruber for nine years. He holds an office second in rank to the Bishop. He possesses a character unblemished. He is pious, zealous, and very laborious in the ministry. Have been one of a committee in the annual conference for many years, for the annual examination of the characters of our preachers, and Mr. Gruber's has been before me every year, in that way, for several years past. Nothing that could lead to immorality has ever been imputed to him in his ministerial character.

Rev. Abner Neal. Have been acquainted with Mr. Gruber for many years, but was more particularly acquainted with him in the year 1814, when he was stationed by the Church in Baltimore, where I reside; and while the British were at North Point, threatening Baltimore. Mr. Gruber had under his charge nearly two thousand negroes, and kept them under the very best discipline. Have heard him frequently preach to them; and he warned them faithfully of their duty to their masters, and patient submission to their condition.

Mr. Anderson addressed the jury for a few minutes. He said, he felt the peace and good order of the state as much at heart as any man, and would be as willing as any man, to see a person guilty of crimes, brought to condign punishment, but he said, he never could consent, contrary to his conscience, and the best light of his own judgment, to use any effort to convict any man of any offence charged against him, when he thought, from the evidence, there was no crime committed. He said, he should address the jury no further on the subject, except to state to them, that he did not wish his own convictions, or opinions, to have any weight with them. He

should leave them free to pass their own unbiassed judgment on the case before them, which, he hoped they would do, with an eye to the public good.

The *Attorney General* closed the argument on the part of the state.

Mr. Martin. I appear before you as one of the counsel for the accused; and if the subject upon which we deliberate involved no other interest than that connected with the right of property, I should be well pleased, after the very just and candid prosecution, to spare the time of the Court, and submit the cause of my client, without comment or remark, to the deliberation and decision of the jury.

But in a trial, which wears an aspect different from, and more alarming than any other, known in the history of the Court: when a citizen, eminent for piety and Christianity, is arraigned, for doing nothing but what benevolence, piety and Christianity required; when the feelings and principles of a vastly numerous church, have been, through the accusation of a member, sensibly wounded; and, when the right of sentiment and of speech is doubted and attacked, silence on our part would be criminal. As for myself, though young and unexperienced, shrinking from the gaze of public scrutiny, and trembling under consciousness of incapacity, I cannot, under those disadvantages, forbear at least the exertion, of defending a client so injured, a cause so just, and principles so important to every American, as to be the very soul of his national independence.

It is, however, a consideration of pleasure to know, that much time will be saved, and much trouble in this investigation unexpectedly relieved: and I am happy to say, relieved by the firm and highly honourable part the state's advocate has acted. Highly honourable! for, however meritorious it may be, actively to pursue and strenuously to prosecute the man, who would meditate, to unhinge the government, and inundate with blood, the land; it is surely equally meritorious, fearlessly to avow him innocent, whose innocence has been proved. The District Attorney stands upon the high ground

of protecting, not abusing, the law—to shield from violation, not pervert it to oppression—ready to exert his power against the wretch who wilfully profanes it, and ready to shelter under the mantle of authority, the prisoner who is wrongfully accused;—whether such accusation arises from the zeal of the misguided, the prejudice of the misinformed, or the uncontradicted information a Grand Jury gleans from the examination of ex parte witnesses.

Gentlemen, you are empaneled to determine a case of no ordinary kind. You are called upon to discharge a trust, the highest that can be discharged by enlightened men, endowed with the powers of reason, and empowered with right of decision. Patriots who have suffered for the liberties of our country, look to your verdict with an agonising care; the Methodist Church bleeds at every pore, for the fate of a minister transferred from the pulpit to the prison box: posterity to succeed, may have reason either to bless or curse the result of this day. The busy crowd that throngs the court, though disposed to immolate at the shrine of opinion the man who differs, and condemn him, because they condemn his sentiments, will learn to affirm your acquittal. When that film, which now obscures the vision, alike of the humane and the wise, shall have fallen; when those fumes which float from the heated prejudices of the time, shall have passed away, they will learn that the blow leveled at the traverser must fall upon themselves; that the freeman who condemns a man for uttering the dictates of his heart, commits suicide upon his liberties: and by sacrificing this reverend gentleman, they sacrifice those noble attributes of their constitution, the right of free sentiment and the right of free discussion.

Who is the accused? What has he spoken? How were his sentiments dangerous? and with what intention did he speak those sentiments? These, gentlemen, are matters for your consideration, and while, in pursuing them, I hope duly to regard the duty to my client, I shall not forget that the Court, the jury, and the Counsel, are already much fatigued with the investigation of this subject.

Who is the accused? He is a gentleman of the clerical ministry, and after laboring with zeal and fidelity many years in the cause of religion, has been appointed Presiding Elder of the District. Nursed in the cradle of the Church, and confirmed in its tenets, he has "grown with its growth, and strengthened with its strength." Aloof from those cares which incite the ambition, deprave the passions, and multiply the misfortunes of the temporal world, his life has been devoted to the service of his God, and his time to the instruction of his fellows. Unconfined to any particular situation, he has travelled from circuit to circuit, shedding in his course, the light of the gospel, and disseminating the principles of morals, philanthropy and religion. The duties of his office carried him to the place where the supposed crime was committed, for which supposed crime, he has been called from the altar of grace, to answer charges preferred by his country.

What has he spoken? At a camp-meeting held last August, in Washington county, the traverser, according to the will of the ministry, and in opposition to his own inclination, preached a sermon from Proverbs, "Righteousness exalted a nation but sin is a reproach to any people." From that text his deductions were many, and after discanting upon the different divisions, addressed the congregation upon the subject of slavery. He spoke of it, as a "national sin," and condemned the practice, as being contrary to natural law, national policy, and the principles of humanity and religion.

Thus, gentlemen, a religious discourse, embracing the principle of slavery, has given rise to this criminal prosecution. The indictment accuses the traverser of an attempt to excite "rebellion"; and is it necessary to ask, whether a minister can be thus criminated, for advancing to his own congregation, sentiments upon a subject, so often the topic of general remark, and so often the theme of public reprobation? The right of slavery is a question of abstract morals, of natural law, and human policy; a subject upon which the judgment ponders and the intellect suspends: discussed in the councils of the nation, it has called forth the efforts of the benevolent

and learned; and the matter of that memorable sermon which now arraigns this reverend gentleman, has been long since proclaimed by elevated statesmen. We will convince you, that sentiments upon slavery, stronger in matter and bolder in expression than any portion of the traverser's discourse, have rolled from the lips and flowed from the pen of the most distinguished Americans. Men, high in office, eminent in science, fair in character, and exalted in the confidence of their fellow citizens, have arrayed themselves as champions of emancipation, and condemned a system they conceived unwise and unnatural; dangerous to the morals and strength of the people, poisoning the springs of social felicity, and repugnant to the principles of free constitution.

What says Mr. Jefferson? In his notes upon Virginia, he thus writes: "There must, doubtless, be an unhappy influence on the manners of our people, produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degraded submission on the other." Again, "With what execration should the statesman be loaded, who, permitting one-half of the citizens thus to trample on the rights of the other, transforms those into despots and these into enemies; destroys the morals of the one part and the *amor patriæ* of the other. For, if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another; in which he must lock up the faculties of his nature, contribute as far as depends on his individual exertions to the evanishment of the human race, or entail his own miserable condition on the endless generations proceeding from him." Continuing, he asks, "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that their liberties are the gift of God? That they are not to be violated but with his wrath? I tremble for the honor of my country, when I reflect that God is just; that his justice cannot sleep forever; that con-

sidering number, nature and means only a revolution in the wheel of fortune, and exchange of situation is among possible events; that it may become probable by supernatural influence! the Almighty has no attribute which can take side with us in such a contest."

Such gentlemen, are the remarks of Mr. Jefferson: and I read them for the purpose of proving, that the subject has been, before this sermon, examined with great animation, and without any suspicion of crime. That philosopher and statesman called the attention of his state to an evil, corroding, as he thought, every day, the morals, inflaming the passions, weakening the energies and endangering, perhaps, the liberties of a free and manly people. These sentiments were free and unconcealed, circulated in Virginia, so numerous in slaves, and open to general observation, private discussion, or public scrutiny.

Yet is Mr. Jefferson infamous? Has he been branded with the ephithet of hypocrite and felon? Has he been subjected to the ceremony of a criminal prosecution, and threatened with the chains and calamities of disgraceful imprisonment? No! since the publication of his notes, he has been elected to the presidential chair; directed for eight years the affairs of the nation, and now reposes, unaccused and unsuspected of anything like treason, in the lap of literature and science.

But, gentlemen, Mr. Jefferson is not the only citizen who has freely spoken upon this subject, and who ranks high in the councils of his country. The remarks of Mr. Talmadge upon the floor of Congress, at its last session, on the question of the Missouri bill, were much, in substance, as those preached by the traverser. Discussing the policy of admitting slavery into Missouri, he says, "You boast of the freedom of your constitution and your laws; you have proclaimed in your declaration of rights that all men are created equal; that they are endowed with certain unalienable rights; among these, life, liberty, and the pursuit of happiness; and yet you have slaves in your country." In another part he continues, "This is a subject, (alluding to slavery) upon which I have

great feeling, for the honour of my country. In a former debate upon the Illinois territory, I mentioned, that our enemies had drawn a picture of our country, as holding in one hand our declaration of rights, and with the other brandishing a whip over our affrighted slaves."

Thus you learn, that arguments upon the evils of slavery, not less powerful than those of the traverser, have been rung by a President of the United States, and a Representative in Congress, in the ears of the whole nation. They have been exalted, not disgraced; they have received the benedictions, not the curses of their country: and I ask by what principles of fairness, can you accord honor to the one, and infamy to the other? They are argued from the right of free discussion: the same right is delegated to the traverser. The golden rule of dealing alike to all, is just, and the same franchise of speech and of conscience, that supported Mr. Jefferson, Mr. Talmadge, and others, when bearing their weapons in the cause of freedom, justifies Mr. Gruber.

As an American citizen he was authorized to discuss the policy of a system, interwoven with the well-being of his government: as a man, moved by the feelings of benevolence, and glowing with enthusiasm of philanthropy, he was privileged in condemning a practice, he thought inconsistent with both: as a minister of the gospel, directed by the laws of his church, and instigated by conscience and belief, he was bound to tender his advice. Had he not, the sin of "leaving undone those things he ought to do," would have recoiled upon him; he would have broken a much more sacred law, than he is said to have violated; he would have sinned against a much higher tribunal (however exalted by learning and virtue), than I have the honor to address: he would have sinned against that God, before whom you, and he, and we must appear.

Gentlemen, before a man can be subject to the sanction of law, law must be proved to exist. He cannot violate that which is not in being. Has any law been adduced to you to-day? Have the prosecution exhibited any statute of the

state, as broken and abused? None has, none can be offered.

It has been remarked, that the laws of Maryland allow slavery. Granted. But it does not command it. The distinction is evident. Did the law positively command, then any argument in opposition, might be criminal. Where it merely permits, it becomes a subject of private opinion, policy and conscience; and any citizen has the privilege, by all the abilities of his mind, to remove that opinion or alter that belief. Besides, the traverser addressed his own congregation, confined his remarks to the pale of his Church, and surely if any can be authorized, it is the pastor who teaches the doctrines of his Church, to those who compose it. The Quakers are principled against bearing arms, and it is unnecessary for me to tell this well-informed jury, that the right of advocating those principles, in their houses of worship, never was denied them. There the Quaker opposes what, in fact, is declared by law; and he draws his right from that freedom of opinion, and prerogative of speech, every man living under the sun of America, has exercised, since the memorable period of seventy-six.

Gentlemen, having endeavoured to establish that the traverser, thus far, has neither violated law nor reason, let us dissect the sermon, and before we proceed to the intention, inquire how his sentiments were dangerous; and whether, upon fair construction, they can be thought calculated to excite either "rebellion, disobedience, or insurrection." You learn from the testimony that the sermon consisted of two distinct parts—one addressed to the white congregation, and the other to the slaves. And so different from an attempt to create insubordination, we will prove that the clear and ostensive purpose was, first, by discussing the principles of slavery (which we have already considered) to effect universal emancipation; secondly, by exposing the cruelty of selling and torturing slaves, to ameliorate and soften the discipline of masters; and thirdly, by instilling the policy and religion of obeying those entitled to govern, to fasten upon the slaves good conduct and obedience.

The internal slave trade of this country formed a considerable part of his discourse; and he displayed in the severest terms (as the witnesses deposed), the sin and wickedness of such atrocious commerce. As to the particular expressions the testimony differs, but in substance is the same; and where is the crime? Is there any man on that jury, or in this court, who would not respond to such sentiments, who would not raise his voice and power in suppressing a traffic opposite to the laws of God, and repugnant to the rights of man? Gentlemen of the jury, interest, policy, necessity, may compel us to retain an evil which seems to be entailed. It is not for me to say, until the efforts of philanthropy shall establish for these people a suitable receptacle, how far emancipation would be prudent. But nothing can justify so flagrant and cruel an abuse of it. No motive can authorize a trader that separates the husband from the wife, the parent from the child, and the relation from the friend; that tears asunder all the ties of social connection and breaks apart all the ligaments of natural union. Steeping yet deeper in misery this unfortunate population, and forcing from their embrace the last relic of human happiness, it "would draw iron tears down Pluto's cheek."

The African slave trade has engaged the attention and attracted the notice of almost every part of Christendom. Your own government have taken laudable and effective measures to suppress it. So proud is England of her exertions that she contends for the right of example; and Napoleon of France, amidst his mad career of war and carnage, when every call of mercy seemed drowned in the din of battle and every fibre of humanity eradicated by the power of ambition, forbade the slave trade. And is that more to be deprecated than this? The same cruelties are practised, the same ties are broken, the same agents employed. Traffickers in blood and panders of avarice, are engaged in both; and the vultures who hover over the coast of Africa, and the vultures that crowd from the sugar farms of Amer-

ica, are equally destructive; alike, they feed upon the vitals and fatten upon the miseries of an unfortunate and degraded people.

Gentlemen, I forbear to press or continue the subject. We have proved, I hope, that the traverser has not in this violated the law. In this country, enlightened as we are, by rays of Christianity, and illumined with light of liberty, no law can be produced to credit a practice, unwise, inhuman, and unjust.

I will next call your attention to a passage, in which he exhibits the inconsistency of our theory and practice. "Is it not a reproach to a man to hold in one hand the Declaration of Independence, and with the other brandish a whip over the bleeding slave?" This description, though hideous, is true. The same was drawn by Mr. Talmadge, and with the same foreigners have reproached us. The picture of American independence, though glowing with the tints of liberty and virtue, cannot but be darkened and discolored by such cruelty and oppression. The traverser did not apply the remark generally, but made it conditional; he did not say that such practices existed; yet if they did exist, they were inconsistent. He threw his sentiments to the congregation; "qui capit, ille facit;" and the man who so far misuses power which chance has given, well merits the lash of invective. Does any attempt appear to cause "rebellion or insurrection." The object was to do no more than expose those cruelties, which, when practised, degrade the man and stigmatize the nation.

This concluded his address to the whites, and as the alleged attempt was to infect the slaves with rebellious principles, observations to them become more interesting, because more important. Several witnesses on the part of the prosecution, and all for the accused, testify that the whole tenor of that discourse went to impress upon their minds the value of religion. "Of all people in the world you ought to have religion," he says, "for when converted, you will disregard the hardships of your life." It is said he spoke of poison

and thereby impliedly recommended the use of it to the slave. In that sentence, where he remarks, "that although you (addressing the whites) use them well, there is no security, but what your children will tyrannize *over them, the slaves abused, rise up and kill or poison your children and all be hung and go to destruction together.*" *Admitting this, can* any man, without perverting common sense and common language, see an attempt to induce the use of poison? Does he not stamp such conduct with the dreadful doom of death and destruction? With equal propriety you might say, to encourage was to describe futurity; and to instigate murder, it would only be necessary to relate the appalling ceremony of criminal prosecutions.

In another passage, "Some of you (addressing the slaves) have good masters; you ought to attend to religion, and discharge your duty to your masters; that it may make your time better here, and hereafter." "Some of you have cruel masters—you are slaves to them, slaves to sin, and if you die without religion, you will be slaves to the devil." What then does he declare that religion to consist in? Rebellion? No—for that, he has affirmed, is repugnant to religion. Disobedience? Mr. Sneathen tells you, upon oath, that he fully discharged the doctrines of his Church, and those doctrines command the slave to obedience. Insurrection? Certainly not, for then he threatens them with the dreadful reversion of future woe. A witness thinks that he said, "If you die slaves to your masters, you will be damned." The witness from ineligible situation must be mistaken; it is too absurd to be believed. Could the traverser say that a man should be punished for an evil he could not avert; and suffer for that which was his misfortune, not his fault? It is contradicted by every witness on the part of the accused, who, we may suppose, from situation and attention, better understood and more correctly remembered the expressions of the sermon.

We have now, gentlemen, examined each passage of the sermon, and contend that it has been viewed through a false

and mistaken medium; that the observations of the traverser were not, in themselves, calculated to inspire "rebellion or disobedience," and therefore hope that the intelligent jury to whom he appeals will wipe that charge from the indictment. But if I should be too sanguine in this hope, should we fail to convince you that his sentiments were useful, not dangerous; much more is necessary to be established—the intention is the life and essence of every crime;—and before you can convict the accused upon the charge of high misdemeanor, an intention to commit the different offences in the indictment must be proved wicked, designed and felonous.

Here let us reflect upon the testimony. In all cases of high capital nature, every man is presumed innocent until proved guilty. Such is the benignity of our laws; such the language of Justice Buller, and such is the voice of all English authorities. The case at bar is an accusation of high criminal character, and it is much stronger to prove by conduct than presume from inference. Where then is the evidence to establish such guilt? Can it be found in the testimony of any witness? Can a single fact or circumstance be adduced, which even savors of such intention?

All the gentlemen of the Methodist clergy state that the traverser strongly objected to preaching on the day named in the indictment, that he expressed every wish to decline, and used every means to avoid the service; and did not consent, until his duty, as Presiding Elder, compelled him to perform what others refused. The congregation of whites he addressed, was four times more numerous than the slaves. The witness from Baltimore, Mr. Neal, informs you what his conduct was in the year 1814. Stationed by his Church in Baltimore, he presided over his congregation during the memorable battle of North Point; and at that anxious moment, when every eye watched the destiny and every heart beat for the danger of our gallant troops, the traverser held in harmless subjection a body of fifteen hundred men. And does this look like an attempt to bring ruin upon the country; to whet the sword of civil war, or light the fires of

desperate rebellion? Can you suppose premeditation to preach on that day, when he so often refused the invitation of the ministry? Would he have by declaiming before the masters, strong in number and power, provoked the very sword of justice; and would he have failed at a former period in the commotion of Baltimore, when all its nerves were braced against foreign attack, to strike a dreadful, and perhaps, a fatal blow? No!—it is inconsistent with common sense to think it; and however the policy of his doctrines may be questioned, none, unless they have drank to the dregs the cup of prejudice or folly, can doubt the purity of his heart. His object was to effect universal emancipation; his intention to teach the law of religion, and to pour into the afflictions of an ill-fated people the comforts and consolations of the Gospel.

Gentlemen of the jury, this trial is new in America: it is novel in the jurisprudence of our country. You must, for examples, unfold the blood-stained page of the fifteenth century. Go back to that season of religious fury, recur to that black and disgraceful period of intemperate opinion, when bigoted belief, was supported by the gibbet and the stake, and the very temples of justice "smoked with bloody execution."

I pretend not to say that this prosecution has originated from such influence; the fair characters of the gentlemen who compose the Grand Jury (though personally unknown to me) defy the suspicion; but it matters not from whom or from what. You view the case with all its lights and solemnly decide upon the principles. Shall this nation, so long gloried in, as the home of the oppressed, the retreat of the persecuted, the asylum of those who, in the dreadful massacre of individual privilege, have flown from their "altars and their gods," be at this day reduced to the disgraceful level of infuriated despotism? I trust not. The streams of jurisprudence, drawn from the foundations of liberty and virtue, will continue to play through the land, free and unpolluted. But it is unnecessary to invoke such sentiments in the bosom of this impartial tribunal. The firmness, the intelligence

and integrity of juries, must ever prove a safeguard and barrier against the encroachments of prejudice. The traverser has been introduced to you, with the imposing name of a Grand Jury—a host of testimony has rallied round, and ventured to support it. Yet, gentlemen, you have seen, not the ingenuous examination of the learned District Attorney, not all the exertions of professional ability, have been enabled to extract one fact or elicit one circumstance to uphold an indictment baseless and unfounded.

Sir, I have done; not, however, without offering my thanks to the honourable Court for the indulgent attention they have pleased to extend; on my part undeserved, and except in my gratitude, unrequited. I have trespassed perhaps too long upon your time; if so, my apology must be sought in the deep interest and importance of the case.

In defending the honor and liberty of a gentleman whose life through a series of twenty years has passed unspotted and unreproached: correct, I am justified in saying, not merely beyond censure; but irreproachable until this day, beyond suspicion: dedicated to the holiest offices of religion, and employed in relieving those miseries and softening those sorrows which should have awakened the sympathies of a colder heart.

Confiding in your virtue, the traverser awaits the verdict with calmness and security. If acquitted, glorying in the principles of his country, he will return to his duties with zeal and faithfulness; if convicted, supported by the consciousness of innocence he will bear whatever punishment the law may inflict, with the resignation of a Christian and the firmness of a man.

THE VERDICT

There was no charge given to the jury by the Court, the jury immediately retired and returned in a few minutes with a verdict of NOT GUILTY.

THE TRIAL OF GEORGE BOWEN FOR THE MURDER OF JONATHAN JEWETT, MASSACHUSETTS, 1816.

THE NARRATIVE

A negro named Jonathan Jewett had been convicted and sentenced to be hanged for the murder of his father. While awaiting execution in a Massachusetts jail, Bowen, a fellow prisoner, was constantly advising him to cheat the gallows by killing himself. Once he was overheard saying to the negro that he was a fool to let the Sheriff do it; that he could die but one death.[1] Other witnesses heard him urging the same thing, saying that he would rather hang himself twice than be hanged once.[2] Jewett did not seem to take to the idea at first, but on the morning set for his legal hanging he was found dead in his cell, hanging by a rope to the gratings of the window. When he heard the news Bowen showed his pleasure, exclaiming that he was as glad as if he had a hundred dollars; that the Sheriff and his assistant had lost their fees and he "had saved the county a slick two hundred dollars."[3] The State, however, charged him with murdering Jewett and at the trial the Chief Justice told the jury that if they found that he had advised Jewett to commit suicide and Jewett had followed his advice they should convict him, as he would be guilty of murder. The jury did not do so; for they doubted whether the advice given by Bowen was the procuring cause of Jewett's suicide.[4]

[1] Partridge, p. 111.
[2] Clap, p. 109; Mattoon, p. 111.
[3] Whitehall, p. 110.
[4] Sixty years later the law as laid down in this case was applied to a curious case in the same State. Lucy Mink was in love with Charley Ricker, but the course of true love not running smoothly for some reason, Charley told her one evening that he intended to leave

THE TRIAL [5]

In the Supreme Judicial Court of Massachusetts, Northampton, September, 1816.

HON. ISAAC PARKER,[6] *Chief Justice.*
HON. CHARLES JACKSON,[7] } *Associates.*
HON. SAMUEL PUTNAM,[8] }

September 21.

The prisoner was arraigned for the murder of Jonathan Jewett, by counselling and aiding him to hang himself in prison, to avoid the ignominy of a public execution, to which he had been sentenced for the murder of his father.

The indictment contained two counts. The first alleged that one Jonathan Jewett, in the night time on the 8th of November, 1815, at Northampton, murdered himself by hanging himself; and that the prisoner, Bowen, before the

her. This made Lucy wild, she rushed to her trunk, took a pistol from it and placed it to her forehead. Before she could draw the trigger, Charley seized her, she struggled, the pistol went off killing Charley. She was convicted of manslaughter and the Supreme Court relying on Bowen's case affirmed the conviction. Com. v. Mink, 123 Mass. 422.

[5] *Bibliography.* * "Reports of Criminal Law Cases decided at the City Hall of New York with notes and references. By Jacob D. Wheeler, Counselor at Law, New York, 182." In three volumes. The preface announces that cases from the Criminal Courts of other states worthy of insertion would be included and the last two volumes contain several of this kind. There was a reprint or second edition issued in 1860. The argument and charge of the Court are briefly reported in the Massachusetts Reports. (13 Mass. 356).

[6] PARKER, ISAAC (1768-1830). Born in Boston. Representative in Congress 1797-1799. U. S. Marshal, District of Maine 1801. Judge Supreme Court of Massachusetts 1806-1814. Chief Justice 1814-1830. Was a Professor of Law in Harvard University for many years.

[7] JACKSON, Charles (1775-1855). Born in Newburyport, Mass. Graduated from Harvard in 1790. Admitted to Boston Bar 1803 and soon became a leader. Member Constitutional Convention 1820. Judge Supreme Court 1813-1824. Codifier of State Laws 1833. Author of "Pleading and Practice in Real Actions."

[8] PUTNAM, Samuel (1768-1853). Born in Danvers, Mass. Member State Legislature and Senate. Judge Supreme Court of Massachusetts 1814-1842.

said self-murder, on etc., feloniously, etc., did counsel, hire, persuade, and procure the said Jewett the said felony and murder of himself, to do and commit, etc. The second count alleged that the prisoner murdered the said Jewett by hanging him, against the form of the statute, etc.

Morton,[9] Attorney General, for Commonwealth.

Mr. Bates[10] and *Mr. Lyman,* for the Prisoner.

THE EVIDENCE FOR THE COMMONWEALTH

Cephas Clap. Am keeper of the jail in Northampton, where Jewett was confined, frequently heard Bowen and Jewett conversing: Bowen would say, "If you are sentenced you will be hung, you will then go there (alluding to the place of execution)—if you let them hang you, you are a d—d fool; I had rather hang myself twice than be hung once." They used to talk mysteriously together; Bowen would say, "Will you do it?" Jewett would reply, "It can't be done." Bowen would answer, "It can; I would make a string of my bed-ticking, and hang myself to these grates in five minutes." Bowen was not in the same room with Jewett, but in the next and they talked through the walls. Heard the advice frequently repeated; Bowen told him not to mind what the clergyman said, for "It was all d—d nonsense; for there was no hell—he could not die but once, and then it was all over."

Cross-examined. Talked often with Jewett about his hanging himself; told him it was as bad to take away his own life as that of another man's, and that he would then have two murders to answer for. Jewett thought it was worse; this was after Bowen's advice. Jewett would ridicule the visiting ministers behind their backs; he had no more religion than a brute;—when the warrant for his death was read to him he was rather serious, but I afterwards heard him sing a very indecent song. Bowen never saw Jewett to my knowledge. Whitehall and Upham were in Bowen's room when Jewett hung himself; all of the prisoners talked with him, and were all noisy: the windows of the lower story were thirteen feet four inches apart; the partition walls were about three feet in thickness. Jewett was dull in conversation, in learning, and in natural capacity. Never heard Jewett say he intended to destroy himself; but he told me

[9] MORTON, Perez. A Harvard graduate who distinguished himself in public life during the Revolutionary War and in later years became Attorney General of Massachusetts. He married in 1778 Sarah Wentworth (Apthorpe) Morton, the authoress, who died in 1846.

[10] BATES, Isaac C. (1780-1845). Born in Granville, Mass. Graduated from Yale in 1802. Attained high position as an advocate. Representative in Congress 1822-1833. U. S. Senator 1841-1845.

that one man advised him to push his head against the wall, running from one side of the cell to the other. He was found dead on November 9th, hanging by a rope, to the gratings of the windows, his knees resting on the floor, his head sunk about half a foot below the bottom of the windows, the rope tied in a fast knot. The rope could not have come from his bedstead, which was made entirely of boards. Don't know whence it came: it might have been given him from Bowen's apartment: he used to put his hand out of the grate, and swing a string with a weight attached to it; Jewett had a stick to catch the string; did not see such a stick after his death, and never saw a rope in Bowen's room: suspected the rope might have come from the room over Jewett's. Jewett might have concealed a cord in his bed; he always manifested much hardness of heart. He spoke lightly about his coffin and his cap, in which it was intended he should be executed. He hung himself in the night. Heard no noise, although I went round the prison at about three o'clock.

Isaac Whitehall. Was a prisoner in the room with Bowen, who was nick-named Speaker of the House; heard Jewett say that the Hon. Mr. Bowen told him, that as he had never been at war with God, he had no peace to make with them. The Sheriff came and told Bowen he would chain him in the dungeon if he did not desist from advising Jewett to hang himself, which made him quiet for a short time; but he soon became as bad as ever. Witness asked Bowen how Jewett could murder himself; he said there was a cord aloft, and he could get it well enough. Bowen would continually remind him how long he had to live, from weeks down to his days and hours. Was awake during the night Jewett hung himself, and heard him come across his cell to the wall, and ask Bowen, "What o'clock?" Bowen told him "Three, and you have but just thirteen hours to live."—"Well, (said Jewett), I will go to pray." "That's you," replied Bowen, an expression common to him to denote pleasure. In about fifteen minutes afterwards, I heard a noise, as if one had removed a stone in the room above; and presently a sound like that of some one choaking. Ran to the window to call the jailer, but Bowen told me to hold my tongue, saying, "What in h—l do you care for a d—m negro?" I soon heard something like a person thumping his toes on the floor. Then heard the jailer come to Jewett's door and call to him, but received no answer. Clap said, "Well, I believe Jonathan has made away with himself"; upon which Bowen raising himself said, "I am as glad as if I had a hundred dollars. Now Clap and old Mattoon have lost their fees, and I have saved the county two hundred dollars slick." Frequently heard Bowen tell Jewett, "he never would go upon the hill (meaning the place of execution), to have the boys make fun of him."

Cross-examined. There was no cord, to my knowledge, conveyed from my room to Jewett's. Bowen could not have given him a rope without assistance. There was a rope in our room, which Bowen used to hide when the

jailer came in, but it was larger than that which Jewett had. Bowen's legs were in irons the night on which the crime was committed—saw Jewett once through the wicket of his door, and afterwards saw his ghost. I used to tell Bowen that he did wrong to tell Jewett to hang himself—never heard Jewett say he intended to do so.

John L. Patridge. Mr. Clap asked me to listen to the conversation of prisoner with Jewett. Every day, heard conversation between them; Bowen advising him to hang himself where he was, and telling him he was a d—m fool to let Mattoon come and hang him, for he could die but one death. Jewett said he would think of it, but said he had nothing to do it with, Bowen said, "I will help you all I can." Jewett said, "I had rather die honourable than kill myself here." Was working in that part of the jail where I could hear them as distinctly as if I had been under their window.

Ebenezer Mattoon. I'm high Sheriff. I threatened to confine Bowen if he did not cease to advise Jewett to destroy himself. Told Jewett, if he wanted to hang himself, he had better do it in my presence. Bowen did not deny having advised Jewett, but said his tongue was his own. Jewett said he had no idea of killing himself, even on the evening pervious to his death; he sometimes was mute when questioned on the subject. A codline was found on Jewett, not sufficient to support his whole weight. Jewett appeared rather pentient on the last evening, though when his cap was tied, he treated it very lightly.

WITNESSES FOR THE PRISONER

N. Turner. Worked in the jail; had heard Jewett say he would disappoint the people who should come on the plain.[11] He would invite people to come and see him hung, and when they were gone, he would say to me, "Those people will be disappointed." He once said he should do like the man in Vermont, who destroyed himself in prison; but afterwards said it would be impossible to hang himself where he was. Never heard Bowen, except in an indirect way, advise Jewett to commit suicide.

Shubael Wilder. Worked in the jail. Heard Jewett say he would not go to the place of execution. He said there were many ways to avoid it; he could get up in the window and throw himself headlong on the floor. I told him I thought he might do it if his courage held out. He replied, "You will see what my courage will do." Never heard Bowen advise him to hang himself.

The Counsel for the prisoner, to invalidate Whitehall's testimony, offered to prove the badness of his character and offered to read a *mittimus* upon his arrest with one Upham, for passing counterfeit money.

THE COURT held that such evidence was inadmissible.

Elihu Sandford. Used frequently to see Jewett in confinement. I employed him to get tobacco from his friends; but they never sent him any. He told me last August that Gen. Mattoon should never hang him.

[11] i.e. the place of execution.

Mr. Bates and *Mr. Lyman* contended before the jury that murder was the taking of the life of another and that a suicide is never a murderer. No punishment is provided by any statute of the State for him who counsels the commission of suicide. Then it is not sufficient for the Commonwealth to prove that Jewett killed himself and that Bowen advised and urged him to commit the act. It must be proved that the advice was the procuring cause of the death, and this the evidence wholly fails to show. And lastly if indicted at all the prisoner should have been charged as an accessory not as a principal.

The *Attorney General* insisted that the adviser of one who commits a felony of himself is a murderer and that is the law as laid down by Blackstone.[12] The proof is abundant that the prisoner's advice was at least one of the procuring causes of Jewett's death.

PARKER, C. J., to the jury. Considering the similarity between the nature of suicide and the murder of another, and the consistency and uniformity of writers and principles on this particular species of murder, if you find the facts as alleged in the indictment, you may safely pronounce the prisoner guilty. The important fact to be inquired into is whether the prisoner was instrumental in the death of Jewett, by advice or otherwise. The question is, Did this advice procure the death of Jewett? The government is not bound to prove that Jewett would not have hung himself had Bowen's counsel never reached his ear. The very act of advising to the commission of a crime is of itself unlawful. The presumption of law is that advice has the influence and effect intended by the adviser, unless it is shown to have been otherwise; as that the counsel was received with scoff, or was manifestly rejected and ridiculed at the time it was given. It was said in the argument that Jewett's abandoned and depraved character furnishes ground to believe that he would have committed the crime without such advice from Bowen. Without doubt he was a hardened and depraved

[12] 4 Black Com. 186.

wretch. But it is in man's nature to revolt at the idea of self-destruction. Where a person is predetermined upon the commission of this crime, the seasonable admonitions of a discreet and respectful friend would probably tend to overthrow his determination. On the other hand, the counsel of an unprincipled wretch, stating the heroism and courage the self-murderer displays, might induce, encourage, and fix the attention, and ultimately procure the perpetration of the dreadful deed. And if other men would be influenced by such advice, the presumption is that Jewett was so influenced. He might have been influenced by many powerful motives to destroy himself. Still the inducements might have been insufficient to procure the actual commission of the act, and one word of additional advice might have turned the scale. If you are satisfied that Jewett, previously to any acquaintance or conversation with the prisoner, had determined within himself, that his own hand should terminate his existence, and that he esteemed the conversation with the prisoner so far as it affected himself as mere idle talk, let your verdict say so. But if you find the prisoner encouraged, and kept alive motives previously existing in Jewett's mind, and suggested others to augment their influence, you will decide accordingly.

It may be thought singular and unjust that the life of a man should be forfeited merely because he has been instrumental in procuring the murder of a culprit within a few hours of death by the sentence of the law. But the community has an interest in the public execution of criminals; and to take such an one out of the reach of the law is no trivial offence. Further: there is no period of human life which is not precious as a season of repentance. The culprit, though under sentence of death, is cheered by hope to the last moment of his existence. And you are not to consider the atrocity of the offence in the least degree diminished by the consideration that justice was thirsting for its sacrifice, and that but a small portion of Jewett's earthly existence could in any event remain to him.

The jury found the prisoner NOT GUILTY.

THE TRIAL OF JOHN URY FOR INCITING NEGROES TO CRIME AND FOR BEING A ROMISH PRIEST, NEW YORK, 1741.

THE NARRATIVE

The year 1741 saw the city of New York excited and alarmed over a supposed plot by the negro slaves to burn the city and murder the inhabitants. There had been a negro insurrection in the city thirty years before and the history of those days had not been forgotten, so that when in the spring of 1741 the cry was raised of a negro plot, there ensued a scene of confusion and alarm, of folly, frenzy and injustice which scarcely has a parallel in this country or has a parallel alone in the witch prosecutions in Massachusetts in 1692.[1]

In February the house of a merchant named Hogg was robbed and John Hughson, the keeper of a low tavern to which negroes were in the habit of resorting, was charged with the crime by his servant, Mary Burton, a girl of sixteen. He confessed to receiving a part of the stolen goods, and one Peggy Carey, a prostitute, was implicated. A few days later, the Governor's house, the King's Chapel, the barracks and stables were burned, but the cause was discovered; but several other fires occurring very soon after were clearly the work of incendiaries, and the cry of a negro rising was heard on all sides. The military was called out and a reward offered by the Governor of money and a full pardon to any person, white or black, who should discover the culprits. Mary Burton thereupon informed the magistrate that three negroes, Cæsar, Prince and Cuffee had met at her master's house and made a plan to burn the city and massacre the

[1] See post p. 514.

inhabitants. Hughson, his wife and Peggy Carey were the only white people in the plot, but Hughson was to be King and Cæsar, Governor. Promised pardon if she would confess, Peggy Carey did so and in May the negroes, Prince and Cuffee were convicted mainly by the evidence of Burton and burned at the stake. Then Peggy Carey retracted her confession only to be hanged along with Hughson and his wife. In the next month more than a dozen negroes were convicted and burned. Amidst it all the cry of "No Popery" was raised and that it was the plot of the Pope and the Spanish, and John Ury, a son of a former Secretary of the South Sea Company, an English non-juring clergyman, who had come to New York for the purpose of teaching school, was arrested and indicted for aiding and abetting the negro Quack in setting fire to the King's house in the fort, and for coming into the City and Province of New York, being a Priest of Rome.[2]

He had no counsel, as was the practice of that day, but against him was the Attorney General and all the lawyers of the city who had from the beginning been active leaders in the prosecution of the negroes.[3] He denied all knowledge of any plot or even of the witnesses who testified against him—Mary Burton, who had been the chief witness in the other cases, and William Kane, a soldier who had himself been accused, but had escaped by making a confession. Ury was convicted and hanged. He maintained his innocence throughout the trial and on the scaffold, with dignity and composure, and it is certain that it was the anti-popery feeling that "led to the sacrifice of an amicable and interesting clergyman of whose innocence there can scarcely remain a doubt, so absurd was the charge against him and so feebly was it supported."

[2] By a statute of 11 Wm. IV. any priest of the church of Rome who should come into the Province after November, 1700, should be imprisoned for life and if he should break prison and be recaptured should suffer death.

[3] Chand. Am. Crim. T., 216n.

THE TRIAL[4]

In the Supreme Court of the Province of New York, New York City, 1741.

CHIEF JUSTICE HORSMANDEN, Presiding.

July 29.

John Ury was charged on two indictments. 1. Having counseled, abetted and procured a negro slave named Quack to set fire to the King's House in the fort. 2. Being a priest "by the authority of the pretended see of Rome," he came into the Province and City of New York after the time lim-

[4] *Bibliography.* * "American Criminal Trials By Peleg W. Chandler, Boston; Charles C. Little & James Brown, London; A. Maxwell, 32 Bell Yard, Lincoln's Inn, 1841." This was an effort to present to the American public the notable criminal trials up to that time in the United States in a form acceptable to the general reader, viz. an abridged narrative without the technicality of legal procedure. Had the plan been successful from a publishers standpoint, it was intended to make it permanent, but probably because it did not appeal to the legal profession, on account of its being only an abridged narrative, its publication was discontinued after only two volumes had been issued. Yet there are several cases, notably the Trial of the Quakers, the Massachusetts Witchcraft Persecutions, and the New York Negro Plot Craze which are well reported and which should satisfy the lawyer as well as the general reader. Mr. Chandler's Report is taken from a "Journal of the Proceedings in the Detection of the Conspiracy, formed by some White People, in conjunction with Negro and other Slaves, for Burning the city of New York and Murdering the Inhabitants," published in 1741 by Daniel Horsmanden, the Chief Justice of the Colony who presided at the trial. He was a firm believer in the reality of the conspiracy, and takes great pains to vindicate the proceedings of the magistrates. His work appears to have been prepared with much care and labor, but it possesses little to interest the general reader, being for the most part a collection of evidence and abstracts of court records, thrown together without much system or proper arrangement. The plot is not referred to in much detail by modern historical writers, although Mr. Dunlap, in the second volume of his history of New York, gives a somewhat extended account of it, abridged from Horsemanden's Journal. Mr. Bancroft disposes of it in a few words. "Once," he says, in speaking of the slaves, "an excitement against them raged in New York, through fear of a pretended plot, but the frenzy grew out of a delusion." In "History of the Bench and Bar of New York" (1877) there is a facsimile title page of Horsmanden's Report.

ited by a law against Jesuits and Popish priests. He pleaded not guilty, prayed copies of the indictments, but a copy of the second only was given him.

Bradley, Attorney General, and *Chambers,*[5] for the King. The *Prisoner* had no Counsel.

Attorney General Bradley. Gentlemen of the jury: In order to maintain the charge against the prisoner upon this indictment we shall prove to you that the prisoner was actually concerned in the plot to burn the King's House, in this city, and murder the inhabitants: that he has frequently been at Hughson's house, in company with Hughson, his wife, and daughter, and Kerry, and with divers negroes, talking with them about the plot, counselling and encouraging them to burn the King's House, and the town, and to kill the inhabitants; that he advised them what would be the fittest time to set the English church on fire: and that the prisoner, as a popish priest, baptized Hughson, his wife, and daughter, and Kerry, and also divers negroes, and told them he could forgive sins, and that he forgave their sins relating to the plot. When he was with the negroes at Hughson's house, he used to make a round ring on the floor with chalk, or something, and stand in the middle of it with a cross in his hand, and swear the negroes into the plot; and that they should not discover either the plot, or him, or any other person concerned in it, though they were to die for it. We shall likewise produce to you a letter from General Oglethorpe, to his honor our Governor, whereby it appears that some time before the plot broke out here, the Spaniards had employed emissaries to burn all the magazines and considerable towns in the English North America and that many priests were employed, under pretended appellations of physicians, dancing masters, and such like occupations and, under such pretences to get admittance into, and confidence in, families.

[5] CHAMBERS, John (1710-1765). Born in New York City. A leader of the New York Bar for many years and later a Justice of the Supreme Court.

What I have alleged, and much more, you will hear fully proved against the prisoner by the witnesses for the King, on this trial; but before we enter upon their examination, give me leave to say a few words concerning the heinousness of this prisoner's offences, and of the popish religion in general; which I shall speak but very briefly to, as there are several other gentlemen of counsel for the king on this trial, and as I have not had either health or leisure to prepare to say much on this occasion.

The late dreadful conspiracy to burn the King's House, and this whole town, and to kill the inhabitants, which the prisoner advised and encouraged, and swore many of the conspirators to join and bear their parts in, are crimes of too black and inhuman a nature to need any aggravation; and, no doubt, the prisoner's engaging, at the peril of his own life, in so destructive, so bloody, and dangerous an enterprise, proceeded from his being employed in it by other popish priests and emissaries, and his zeal for that murderous religion: for the popish religion is such that they hold it not only lawful but meritorious to kill and destroy all that differ in opinion from them, if it may anyways serve the interest of their detestable religion; the whole scheme of which seems to be a restless endeavor to extirpate all other religions whatsoever, but more especially the Protestant religion, which they maliciously call the northern heresy. To attain this wicked end, their first trick is, by the subtle arguments to persuade the laity out of their senses, by showing them a seeming necessity for their believing as their church believes, if they tender their own salvation; and this, with many more frauds, the church of Rome has artfully devised to get an absolute dominion over the consciences, that they may the more easily pick the pockets of credulous people; witness the pretended pardons and indulgences of that crafty and deceitful church, and their masses to pray souls out of purgatory, which they quote (or rather wrest) Scripture for, when no such thing is to be found there; but is a mere invention and cheat of their own to gull the laity of their money.

Then they have their doctrine of transubstantiation, which is so big with absurdities, that it is shocking to the common sense and reason of mankind; for were that doctrine true, their priests, by a few words of their mouths, can make a god as often as they please; but then they eat him too; and this they have the impudence to call honoring and adoring of him. Blasphemous wretches! For hereby they endeavor to exalt themselves above God himself, inasmuch as the creator must necessarily be greater than his creature.

These and many other juggling tricks they have in their hocus pocus, bloody religion; which have been stripped of all their wretched disguise, and fully exposed in their own colors by many eminent divines, but more particularly by the great Dr. Tillotson, whose extraordinary endowments of mind, his inimitable works, and exemplary piety and charity, have gained him such universal esteem and applause throughout all the Protestant world, as, no doubt, will endure as long as the Protestant name and religion lasts, which I hope will be to the end of time.

Gentlemen: when you have heard the witnesses prove what I have alleged against the prisoner, I make no doubt you will, for your oath's sake, and for your own country's peace and future safety, find him guilty.

WITNESSES FOR THE PROSECUTION

Mary Burton. Have seen Ury very often at Hughson's, about Christmas and new year, and then he staid away about a fortnight or three weeks, and returned again about the time that Hogg's goods came to our house. Have often seen him in company with Hughson, his wife, and daughter, Peggy, and several negroes, talking about the plot, burning the fort first, then the fly, and then the dock. Upon some of the negroes saying, they were afraid of being damned for being concerned in the plot, heard Ury tell them they need not fear doing it, for that he could forgive them. They were to burn the whole town and to kill the people; Ury was to be captain of a company of negroes, and he was to begin the fire where he lodged. Once when they were together above stairs, Ury, Hughson, his wife, and Peggy, they called Mary, and I went up, but when I came up stairs, Ury had a book in his hand, and bade me go away, and asked me what business I had there, and said, they did not call me, they called Mary Hughson; he was angry, and shut the door

to again. I looked under it, and there was a black ring upon the floor, and things in it, that seemed to look like rats, I don't know what they were. Another time I heard him talking with the negroes, Quack and others, about the plot, and he turned the negroes out of the room, and asked me to swear. I said I would swear, if they would tell me what I was going to swear; but they would have me swear first; Hughson and his wife went and fetched silks and gold rings, and offered them to me, in case I would swear; but I would not, and they said, I was a fool. Ury then told me, he could forgive sins as well as God; I answered, I thought that was out of his power. One night, some time about new year, I was listening at the door of the room upon the stairs, in which were Ury, Hughson, his wife and daughter Sarah, Cæsar, Prince, Cuff, and other negroes; I looked through the door, and saw upon the table a black thing like a child, when Ury had a book in his hand, and was reading, but I did not understand the language; and having a spoon in my hand, I happened to let it drop upon the floor; Ury came out of the room, running after me down stairs, he fell into a tub of water, which stood at the foot of the stairs, and I ran away. When they were doing anything extraordinary at nights, they would send me to bed.

Prisoner. You say, you have seen me several times at Hughson's, what clothes did I usually wear? I cannot tell what clothes you wore particularly. That is strange, and you know me so well? I have seen you in several clothes, but you chiefly wore a riding coat, and often a brown coat, trimmed with black. I never wore any such coat. What time of the day did I usually come to Hughson's? You used chiefly to come in the night time, and when I have been going to bed; I have seen you undressing in Peggy's room, as if you were to lie there; but I cannot say that you did, for you were always gone before I was up in the morning. What room was I in when I called Mary, and you came up, as you said you did? In the great room up stairs. What answer did the negroes make, when I offered to forgive them their sins, as you said? I don't remember.

William Kane. Know the prisoner very well, have seen him at Croker's, at Coffin's, and Hughson's, and particularly with Daniel Fagen, Jerry Corker, and one Plummer, and several negroes, at Hughson's. Jerry Corker was one of the first that brought me into the plot. One day before Christmas last, I was standing sentry at the Governor's door, and Jerry Corker coming out, I being dry, asked him for beer; Jerry said he would get some; that he had rum in his pocket, and would make flip; he went in and made it in a copper pot, and told me it was with loaf sugar; I drank a draught of it; and when I was relieved at night, Corker came into the guard room, and asked me if I would go to Corker's at the Fighting Cocks, where there was to be a christening by a Romish priest; we went thither, and staid till past ten o'clock, but the people did not come that night. The next night, Corker and I went there again, but the people were

not there. The third night we went to New street, to the house of one Coffin, a pedlar, there they had a child, and Ury christened it, and read Latin. Three acted as priests, and handed the book about. Ury put salt in the child's mouth, sprinkled it thrice, and crossed it. Ury and Corker there endeavored to persuade me to be a Roman Catholic; Ury said, it was best to be a Roman, they could forgive sins for anything ever so bad. I told him, I did not believe him; and Corker told me that Ury and all priests could forgive sins. Ury was present at Hughson's when John Hughson swore me and his father, and brothers, into the plot; there was Quack, and forty or fifty negroes there at the same time; we were to burn the town, and destroy the people. David Johnson was there, and Ury tipped him on the shoulder, and they went into a room together, and staid a quarter of an hour; and when they came back, Johnson said "We will burn the Dutch and get their money." By Ury's persuasions that he could forgive sins, many were brought in to be concerned. Ury was near me when I was sworn, and the Hughsons, and I took him to be one of the head; Ury wanted to christen me, but I would not suffer him, and he would not speak to me, nor before me, for a long time; for he could not abide me because I refused to become a Roman, till after he knew that I was concerned in the plot, and even then he did not much care for me. Ury was by, when Hughson swore eight negroes into the plot, in a ring; and it was then talked among them, of burning the fort; and Quack, who was present, was at that time pitched upon to do it, in the presence of Ury, who might and probably did hear it. Jerry Corker told me that the English church was intended to be burnt on Christmas day last; but Ury put it off, and said that when the weather was better, then there would be a fuller congregation.

Prisoner. You say you have seen me very often, you saw me at Coffin's, you saw me several times at Hughson's, pray what clothes did you see me in? I have seen you in black, I have seen you in a yellowish great coat, and sometimes in a straight-bodied coat, of much the same color. What time of the day have you seen me at Hughson's, and what did I say to you? I have seen you there chiefly at night, and you told me you could forgive my sins, and there would be no fear of damnation, and you wanted to christen me. You say you saw me christen a child in New street; how was the child dressed, and what ceremony did I use, and who was present there then? The child was not naked, it was dressed as usual; and you put it on your left arm, and sprinkled it with water three times, and put salt in its mouth, and crossed it, as I said before; there were about nine persons present. Did I use anything besides salt and water? Not that I saw. Who was present at the christening? Eight or nine persons, I think; there was Jerry Corker, Daniel Fagen, Coffin, you, the mother of the child, myself and two or three more. You say you saw me at Hughson's several times, what room was I usually in? Sometimes in one room, and sometimes in

another. At what times was I there? At nights. What habit have you seen me wear? A black coat, a yellowish surtout, and sometimes a light colored close bodied cape coat. What did I offer in order to induce you to become a Roman catholic? Forgiveness of all my sins past, and what I should do in this case; and I said to you, what a fine thing it is to be of such a religion, when a priest can forgive sins, and send one to heaven.

Sarah Hughson. Know the prisoner, and have often seen him at my father's late in last fall chiefly; have seen him there at night, in company with negroes, when they have been talking of burning the town, and killing the white people. Have seen him make a ring with chalk on the floor, which he made the negroes stand round, and put their left foot in, and he swore them with a cross in his hand, to burn and destroy the town, and to cut their masters' and mistresses' throats. He swore Bastian, Cæsar, Prince, and Quack; he swore them to keep secret, and not to discover him or anybody else, if there were to die for it. Have heard Ury and the negroes talk of burning the fort; he said, if that did not do, they were to begin at the east end of the town, with a strong easterly wind, and that would go through the whole town. He asked me to swear to the plot, and said, that I should have all my sins forgiven, if I kept all secret; and he swore me on an English book, and my parents and Peggy were by; he swore Peggy too; I heard him tell her that all the sins which she had committed should be forgiven her; and he told her that priests could forgive sins as well as God, if they would follow their directions. He used to christen negroes there; he christened Cæsar, Quack, and other negroes, crossed them on the face, had water and other things; and he told them he would absolve them from all their sins.

Prisoner. How did I swear you? On a book, I believe it was an English book. Who was present when I swore you? My parents, Peggy, Kane, and others. You say I baptized several people, pray what ceremony did I use at baptizing? When you baptized the negroes, you made a cross upon their faces, and sprinkled water, and you used something else, but I cannot tell what; and you talked in a language which I did not understand. Whom did I baptize? Cæsar, Prince, Bastian, Quack, Cuffee, and several other negroes.

Chambers introduced a letter from General Oglethrope, of Georgia, to the Lieutenant Governor of New York, to show a probability that the prisoner was an emissary of Spain. The statement in the letter was, that a Spanish prisoner taken in an engagement near Augustine, had given intelligence that the Spaniards had employed emissaries to burn all the magazines and considerable towns in North America, thereby to prevent the subsistence of the English fleet in the West Indies; and that, for this purpose, many priests were employed who pretended to be physicians, dancing masters, and instructors, and under

these pretences were to endeavor to gain admittance and confidence in private families.

Chambers. This is all the evidence.

The *Prisoner,* who was obliged to conduct his own defence, being asked if he had any witnesses, requested that Mr. *Croker* might be called and sworn.

Prisoner. As I have lodged at your house for some time, you can best give an account of my manner of life and conversation; and pray first inform the King's Judges and the jury, if you ever saw any negroes come after me.

Croker. No, I never saw any negroes come after you.

Prisoner. Pray give an account of what you know of me. Mr. Ury came to my house last summer before last, and staid a week; he then returned to Burlington, and came back last November, and said he was going further, but I prevailed upon him to stay to teach my son Latin, for which I was to give him his lodging and diet. Some time ago he went to Staten Island and preached there, and said he was paid for it. He lodged at my house from November till a little before Campbell took Hughson's house; and while he was with me, he kept pretty good hours; sometimes he came home by eight, or nine, or ten o'clock, and sometimes staid out till eleven or twelve at night. He once went to Brunswick this spring, before the fort was burnt, as I heard, or else I do not know that he lay out of my house. Once talking of negroes, I heard him say, he did not think them proper subjects of salvation. He used to go up stairs sometimes, light a candle in the day time, and lock himself up in a room alone.

The *Attorney General.* Pray, Mr. Croker, were you in town all the time he lodged at your house? No, I have been out for a day or so. Pray, Mr. Croker, what hours did the prisoner usually come home at? Sometimes sooner and sometimes later; I have known him to stay out sometimes till eleven or twelve o'clock, once or twice later; I asked him why he staid so late, and where he had been? he commonly told me he had been at Mr. Webb's; and sometimes at some other private houses. When did Ury come to lodge at your house, and when did he leave it? He came to my house in November last, and left it a little before Campbell went to live at Hughson's house. Have you ever heard him preach? Yes, once, and he then said he was to preach again next Sunday; and in his prayer before the sermon, he prayed for his majesty, King George, and all the royal family.

Joseph Webb. Have known Mr. Ury since November last; was then at work at John Croker's, at the English Cocks, and hearing him reading Latin and English, and thinking he read well, I inquired of Croker who he was? He told me he was a school-master lately come from Philadelphia; and from this I became acquainted with him, and asked him if he would teach a child of mine; and he said he would, if Croker would give him the liberty of coming to his house, which Croker agreed to, and I sent my child to him, and he taught him Latin. After this I recommended him to Colonel Beekman, to teach his daughter

to write and cipher, and growing more intimate with him, I observed the poor and mean appearance in his habit, and I thought his pocket might be answerable to it; I gave him an invitation to my house, and told him he should be welcome, at my table noon and night, at any time, when he saw proper; he frequently came to my house accordingly, all the winter after. He used often to stay at my house late in discoursing, sometimes on one subject, sometimes on another, and has staid there, now and then, till eleven or twelve at night, and I have often gone home with him to his lodging at those hours. Mr. Ury told me he was a non-juring minister; having asked him who ordained him, he answered me, the senior non-juror in England; I have heard him preach, and have heard him say, such a day was his sacrament day, and he must be at sacrament.

The *Attorney General.* Did he say he must take the sacrament, or be at the sacrament, or administer the sacrament? I cannot be sure, but I remember he said it was his sacrament day. Was it Sundays or working days he said were his sacrament days? I cannot be sure, but I think I have heard him name both. Do you know anything of his buying of wafers or going to a confectioner's? He asked me for a confectioner's shop, and I showed him Mr. DeBrosse's, where he went along with me; and after he asked for several sorts of sweet meats, he asked for wafers; which being shown to him, he asked Mr. De Brosse if he made wafers for the Lutheran minister, and he was told he did, but I do not remember that he bought any of them; I have heard him pray and preach several times, but don't remember that ever I heard him pray for King George, but in general terms for the King. I am by trade a carpenter, and Ury applied to me to make him up something in Hughson's house, which I have heard since called an altar. Ury gave me directions for making it, and said it was a place to lay books on to read, or to put a candle or a bottle and a glass on, or other such like common uses; it was two pieces of board, which formed a triangle, and was raised against the wall, at the bottom of which was a shelf, on each side there was a place to hold a candle.

The *Attorney General.* Do you think if a man wanted a shelf or other place to lay a book on to read, or set a bottle or glass on, he would make it in that form? I can't say; people may have odd humors, but I should not. When you made it, what did you take it for? I can't say; I followed his direction. Do you know anything of Ury's being imprisoned in England? Ury did tell me that he was imprisoned in England; he said he wrote a book there, and that the critics laid hold of it, picked a hole in it and construed it treason; but if it was, he said, it was contrary to his intentions. Mr. Webb, in your conversations together, what have you heard him say about negroes? We were one day talking about negroes, and I said I thought they had souls to be saved or lost as well as other people; Ury said he thought they were not proper objects of salvation; I replied, what would

you do with them, would you damn them all? No, says he, leave them to that Great Being that has made them, he knows best what to do with them; says he, they are of a slavish nature, it is the nature of them to be slaves, give them learning, do them all the good you can, and put them beyond the condition of slaves, and in return, they will cut your throats.

John Campbell. Never saw prisoner at Hughson's home till I went to take possession of it at May day last, and then as we were going there together, he said he did not know the way thither; and when we came down, he took Gerardus Comfort's house for it. I know nothing more of him, for I took him for a grave, sober, honest man.

Ann Campbell. Went with my husband and Mr. Ury, on May day last, to Hughson's to take possession of the house; and when we came there, Sarah Hughson, the daughter, was in possession. We told her she must go out of the house; for that my husband had taken it; whereupon Sarah Hughson swore and cursed at me; and Mr. Ury said to her, "How dare you talk so impertinently and saucily to an old woman, you impudent hussy? Go out of the house, or I'll turn you out." Sarah then swore miserably, and said, "You have a house now, but shall not have one long." I have often heard him pray and sing psalms; and he prayed by a sick woman. I never saw any harm by him; my husband and he were to keep school together.

The *Attorney General.* If your honors please, as the prisoner has been now endeavoring to prove he is not a Romish priest, and has already insisted on it as a part of his defence; I shall beg leave to examine a witness to that point.

THE COURT. Call him then, Mr. Attorney.

Joseph Hildreth. The way I came to hear of Mr. Ury was, that last winter I happened to be with a friend at Mr. Croker's, and Mr. Webb, joiner, asked me what school I had; and if I would decline to take a partner, one very well versed in the English, Latin and Greek tongues? I answered him, what school I had I could very well manage myself; I had no inclination for a partner at all. He said he was a good sober sort of a man, and understood his business very well, and if we could agree, he did not doubt but it would do very well. I answered him, I incline to be master of my own school alone, though it was not so large as if I had a partner. He, seeing I had no inclination for him, did not tell me who he was. Some time after I had a little business with Captain Griffith, where I met with prisoner and Webb in company, which was the first time I ever spoke to him. After our salutation he asked me concerning my school and method of teaching; we stopped in at Baker's, and took a serious glass together; at which time he took a small book out of his pocket (English and Latin) and construed the 117th Psalms; then laying the book on the table, I took it up, and was going to look on the title page, but he seized it out of my hands, and told me I must not look into it, and put it in his pocket. Another time, at my school, I had

some discourse with him concerning Mr. Whitefield's letter in answer to Mr. Wesley's sermon on free grace; which letter he did not approve of at all, and told me, he believed it was through the great encouragement the negroes had received from Mr. Whitefield, we had all this disturbance; and that he believed Mr. Whitefield was more of a Roman than anything else; and he believed he came abroad with no good design. I asked him what was the signification of a non-juror as I understood he pretended to be? He answered, those that would not take the oaths of allegiance, as he did not. I asked him why? Says he, "Can you swear one to be a bastard?" "No." "No more can they say King James was one; and the difference between us non-jurors and others is this: we, in the prayer for the King and royal family, mention no names, as they do." I asked him if they prayed for the King and royal family. He said, "let him be who will, that was the King;" he mentioned no names. Another time, he said, "You talk so much against popery, I believe you speak so much against it, you will find you have (or I think you will have) a pope in your belly; for, says he, the absolution of the church of Rome is not half so bad as that of the church of England at the visitation of the sick." "But," says I, "I don't approve of their confessing to priests." Says I, "there is a deal of wickedness and deceit in it." Says he, "no, no; for when any person makes confessions, the priest does not know who they be; for he does not so much as see them, but only hears and absolves them." "Then," says I, "I was mistaken." "Oh," says he, "they speak against the church of Rome, but don't know them; their priests are the most learned of men; the articles of the church of England were made in distracted times." And I observed several times he said, "we priests." Says he, "your Roman priests will make you believe, and prove by the plain rules of grammar, that black is white, and white black, and that the wafer and wine is the real body and blood of Christ."

We were often in company but the best part of our discourse was upon salvation by faith alone, which he would not allow, nor predestination; and he told me, he really believed the moon to be an inhabited planet, and all the stars were inhabited, or else, says he, I would not repeat that part of the Nicene creed, "begotten of his Father before all worlds"; and, says he, many texts of scripture confirm it to be so. About two days before I heard him preach, being in his room; seeing the altar placed in the corner, I asked him what use that was for? First, he said, only to lay books on, or for a candle to sit and read by; but I told him I could not think it, for I supposed it for the sacrament by its form and odd color. I begged him to let me know what it was; after some time he told me it was for the sacrament; and every saint's day was exposed, only covered with a piece of white linen; and that he administered on some proper days; and they received the wafer instead of bread, and white instead of red wine. I asked, why the wafer? Because, says he, the

wafer is more pure; and no bread he thought pure enough to represent the body of our Lord; going to his small box, says he, I'll get a piece and you shall taste it if you will; and he brought me a piece, and I took and ate it. He told me that some time before he had baptized a child in the house, but they used more ceremonies than we; they anointed and washed one another's feet. He told me that at the time of the celebration, or at what time the sacrament was exposed, they had lighted candles burning to represent our Saviour as the light of the world. When I came in to hear him preach, I accordingly saw it as he told me; the sacrament was on the altar covered with a white linen cloth, and there were three candles burning; not a minute after I came in, he put out the candles, and put his sacrament in his box, and locked them up.

The *Prisoner* (addressing the Court and jury) did not deny that there had been a conspiracy, but pointed out the absurdity of supposing that he was concerned in it. Could anyone believe that he would have remained in the city so long after the discovery of the plot if he were guilty; especially as he had been warned many days previous to his arrest that he was regarded with jealousy, there being suspicions that he was a priest? He averred that the suspicion of his being a priest was the cause of his being accused; but was it probable that the principal actors in this plot would entrust it to men of learning like priests, or that the latter would become associates of slaves in such a nefarious design as that of which he was accused? In regard to the positive testimony of the witnesses, he contended that they were not entitled to belief. If he was at the bottom of this plot, or the chief actor in it, why had they not before proclaimed it? Why had they maintained silence for several months until a large number had actually been hanged? His name had never been whispered by the informers until very recently; their evidence was evidently made up to suit the popular cry against popery. Besides all this, he formerly had a difficulty with Sarah Hughson, one of the witnesses, in consequence of his reproving her for bad language, and she had threatened his life. Was her evidence, under these circumstances, to be used against him? In regard to the second indictment, that he was a Romish priest, he insisted that

there was no evidence of it whatever; and concluded: Gentlemen, the mistake the major part of the world lies under is their apprehending that a non-juring priest must be a popish priest; whereas there are no truer Protestants for they are far from having any regard to a pretender, or for setting on the throne a popish prince to be the head of a Protestant church. The doctrine they assert and stand by is non-resistance and passive obedience, which is now as vigorously maintained as ever it was in any reign. And I believe there is no non-juror, either clergy or laity, but would show themselves such true subjects to the present King George, as to take the oaths of allegience and supremacy. I have now no more to say, but hope and pray that what has been offered will be considered with minds unprejudiced, minds prepossessed with no opinions, with minds in a diligent search after truth, you being gentlemen, I hope, fearing God, reverencing conscience, hating partiality, lovers of truth and innocency, and having a tender regard to life.

Chambers for the King made a long and excited speech against the prisoner, much of which consisted of invectives against the Roman Catholic religion in general: The monstrous wickedness of this plot would probably among strangers impeach its credit; but if it be considered as the contrivance of the public enemy, and the inhuman dictate of a bloody religion, the wonder ceases. What more cruel and unnatural can be conceived than what Rome has contrived; yea, what more savage and barbarous, than what popery has attempted, and sometimes executed, for the extirpation of that which the papists call heresy? We need not go so for from home as the valleys of Piedmont, nor rake into the ashes of the Waldenses and Albigenses, for tragical instances of popish cruelty. We need not remind you of the massacre at Paris, nor the later desolations in France, nor mention the horrible slaughters of the Duke d'Alva in the low countries. We need not recount the many millions of lives that in remote countries and different ages have been sacrificed to the Roman idol; nor measure out to you that ocean of foreign blood

with which the scarlet whore hath made herself perpetually drunk. No, gentlemen, the histories of our native country will give us a formidable idea of popery; and inform us of the detestable principles of that religion; witness the blood of our own martyrs who perished in prisons and at the stake, without beginning higher than my Lord Cobham, and recounting their number down to the end of Queen Mary's reign. Witness that execrable design to blow up kings, lords, and commons, in the gunpowder treason, contrived by the papists; that intestine fire that broke out in the last unnatural war, the coals whereof were blown up by them; that bloody massacre of many thousands of protestants by the Irish papists about the same time; the restless spirit of that party, which has broken out in plots in almost every reign since the reformation; the arbitrary and illegal measures that preceded the glorious revolution; and the unnatural rebellion within our memory. These are all evidences of the destructive tendency of that bloody religion which, in order to promote its interests, never boggles at the vilest means, can sanctify the most execrable villainies; and, to encourage its votaries, will cannonize for saints a Guy Faux and others, some of the greatest monsters of iniquity that ever trod upon the face of the earth.

The jury went out and in fifteen minutes returned a verdict of GUILTY. The COURT asked whether he had anything to say in arrest of judgment, or why the sentence of death should not be passed upon him. The *Prisoner* answered he had nothing to say, but requested as much time as could be allowed him to settle his private affairs.

THE EXECUTION

Ury was executed on Saturday, August 29, 1741. Arrived at the place of execution, he addressed the crowd from the gallows, immediately before he suffered, in these words:

Fellow Christians, I am now about to suffer a death, attended with ignominy and pain; but it is the cup that my heavenly father has put into my hand, and I drink it with pleasure; it is the cross of my

dear Redeemer, I bear it with alacrity, knowing that all that live godly in Christ Jesus, must suffer persecution; and we must be made in some degree partakers of his sufferings, before we can share in the glories of his resurrection; for he went up to glory after he ascended mount Calvary; he did not wear the crown of glory before the crown of thorns. I am to appear before an awful and tremendous God, a being of infinite purity and unerring justice; a God who by no means will clear the guilty, that cannot be reconciled either to sin or sinners; in the presence of that God, the possessor of heaven and earth, I lift up my hands, and solemnly protest, I am innocent of what is laid to my charge. I appeal to the great God for my non-knowledge of Hughson, his wife, or the creature that was hanged with them. I never saw them living, dying or dead; nor ever had I any knowledge or confederacy with white or black, as to any plot; and, upon the memorials of the body and blood of my dearest Lord, in the creatures of bread and wine, in which I have commemorated the love of my dying Lord, I protest that the witnesses are prejured; I never knew them but at my trial. But for a removal of all scruples that may arise after my death, I shall give my thoughts on some points. First, I firmly believe and attest, that it is not in the power of man to forgive sin; that it is the prerogative only of the great God to dispense pardon for sin; and that those who dare pretend to such a power, do in some degree commit that great and unpardonable sin, the sin against the holy spirit; because they pretend to that power which their own consciences proclaim to be a lie. Again, I solemnly attest and believe, that a person having committed crimes that have or might have proved hurtful or destructive to the peace of society, and does not discover the whole scheme, and all the persons concerned with him, cannot obtain pardon from God. And it is not the taking any oath or oaths that ought to hinder him from confessing his guilt, and all that he knows about it; for such obligations are not only sinful, but unpardonable, if not broken. Now a person firmly believing this, and knowing that an eternal state of happiness or misery depends upon the performance or non-performance of the above mentioned things, will not trifle with such important affairs. I have no more to say by way of clearing my innocency, knowing that to a true, Christian, unprejudiced mind, I must appear guiltless; but, however, I am not very solicitous about it. I rejoice, and it is now my comfort (and will support me and protect me from the crowd of evil spirits that I must meet in my flight to the region of bliss assigned me) that my conscience speaks peace to me. Indeed, it may be shocking to some serious christians, that the holy God should suffer innocency to be slain by the hands of cruel and bloody persons (I mean the witnesses who swore against me at my trial) indeed, there may be reasons assigned for it, but as they may be liable to objections, I decline them; and shall only say, that this is one of the dark providences of the great God, in his wise, just, good government of the lower world. In fine, I depart this waste, this howling wilderness, with a mind serene, free from all malice, with a forgiving spirit, so far as the gospel of my dear and only redeemer obliges and enjoins

me to, hoping and praying that Jesus, who alone is the giver of repentance, will convince, conquer and enlighten my murderers' souls, that they may publicly confess their horrid wickedness before God and the world, so that their souls may be saved in the day of the Lord Jesus.

THE TRIAL OF JUDGE WILKINSON, DR. WILKINSON AND JOHN MURDAUGH FOR THE MURDER OF JOHN ROTHWELL AND ALEXANDER H. MEEKS, KENTUCKY, 1839.

THE NARRATIVE

Judge Wilkinson of Mississippi was a guest at the Galt House in Louisville on his way to Bardstown where he was to be married. He had with him his brother, Dr. Wilkinson, a physician, and a young friend named Murdaugh and the three remained in Louisville a few days to attend to their wardrobes. Redding, a local tailor, was employed to make a suit of clothes for the Doctor; the coat did not fit, a dispute arose in the shop over the matter which ended in a scuffle in which the Judge struck the tailor a blow on the head with a poker and both the Doctor and Murdaugh drew bowie knives.[1] The tailor went to the Mayor's office to get a writ against the three, but was told that he must first have their names, so Redding, accompanied by his brother-in-law, Rothwell, went to the Galt House to obtain them, which he did from the bar-keeper.[2] Meanwhile the story of the affray at the tailor's had reached his friends, and several of them, notably a butcher named Johnson and a bar-keeper named Meeks were suggesting to the others that they should go to the Galt House and avenge the attack on the tailor. Hence it was that just before supper a number of persons, friends of Redding—the butcher and the bar-keeper, Holmes, Oldham and others—dropped into the bar-room and most if not all of them were armed. It was not unusual for strangers to assemble at the Hotel at this time for it was a popular gathering place of the City, but on this occasion the number assembled and the

[1] John W. Redding, p. 138. [2] John W. Redding, p. 139.

excitement which prevailed caused several people to believe that a fight would probably take place. Just after Redding had obtained the names of his assailants, Judge Wilkinson came into the bar-room and was at once asked by Redding if he was not the man who had struck him with a poker and was denounced as a scoundrel, coward and poor Mississippi Judge, and told that if the Mississippians would lay aside their weapons and go out in the street, he, Redding, would whip all of them. The Judge replied that he would have nothing to do with a man of his profession, that if he laid his hand upon him he would kill him, and then retired, accompanied by a friend, Mr. Everett, to his own room on the second floor. A quarter of an hour later, the Judge, the Doctor and Murdaugh came down into the bar-room for supper which was nearly ready. When they entered, Redding exclaimed in a high voice, "They are all three here now," and accosted Murdaugh, saying, "You are the gentleman who drew a knife upon me at my shop to-day." Murdaugh replied, "Whoever says I drew a knife upon you, is a damned liar," and displayed in his right hand a white-handled dirk, telling him to stand off, and swearing he would kill the first man that laid his hands upon him. Meeks seized his wrist, exclaiming, "You are the damned little rascal," and struck him over the head with the butt-end of a whip, when several persons rushed up, and Rothwell struck him over the head with a hickory club. Murdaugh took the knife in his left hand and stabbed at Meeks, who retreated, striking Murdaugh with the whip, when Murdaugh gave a fatal stab to Meeks. During this time, Dr. Wilkinson was knocked down and beaten by one Holmes and others. Judge Wilkinson had also been struck with a sword cane by some one of the friends of Redding. Rothwell joined those who were beating the Doctor when the Judge stabbed Rothwell in two places with a bowie knife and, also, with the same knife, stabbed Holmes through the arm. The Judge then retreated through the passage and upstairs to his room, keeping the crowd away by brandishing his bowie knife. He and Murdaugh were pur-

sued to the stairs and struck with chairs and as they ascended were shot at by Oldham. Redding disappeared as soon as the affray commenced, but when it was over Rothwell [3] was found dying and Meeks [4] dead on the bar-room floor. The Mississippians were unknown to any of those who assaulted them, had never seen nor conversed with any of them.

Judge Wilkinson, his brother, the Doctor, and Murdaugh after a preliminary examination were indicted for the murder of the two men by a Louisville Grand Jury, but on the petition of the friends of the Mississippians who alleged that they could not get a fair trial in that city, the State Legislature passed an act permitting the venue to be changed to the Mercer Circuit Court and at Harrodsburg in that county the trial came off on the 11th day of March, 1839.

The case had caused intense excitement throughout the state and the court-room was crowded to the doors, more than two hundred of the spectators being women, to whom the presiding judge gave preference in the hearing. The

[3] "Rothwell was a hatter in Louisville and well thought of by his neighbors. His death occasioned a great and melancholy gloom throughout the whole city. People talked of it with tears, as a circumstance peculiarly to be lamented. The oldest inhabitants of the city could call to mind, vividly, the day on which his mother had landed on the wharf with him an infant in her arms, just thirty-seven years ago. He had grown up with its growth—almost coeval in years—and he had prospered with its prosperity by keeping pace with its enterprize and industry. As a mechanic he had reached competency after a life of toil; as a citizen, he had won the affections of all that knew him, by the warmth of his heart, the devotedness of his friendship, and the zeal and promptitude with which he sought the point of danger when fire or pestilence assailed their habitations." Preface to Browne's Report.

[4] "We have but little opportunity for collecting any details of interest to the reader respecting Mr. Meeks. His family, it was said, lived at Madison, Indiana. He had been some years known in this city; part of the time as bar-keeper to Mr. Dewees, who keeps the hotel on Wall Street. Since his death it has been erroneously asserted in the eastern papers that he was the noted Robinson; but it is certainly a mistake. Many still assert that he had a great resemblance to Robinson; that, however, may have been accidental." Preface to Browne's Report. See Trial of Richard P. Robinson. 3 American State Trials.

Commonwealth was represented by the Prosecuting Attorney, and a venerable member of the Bar, Benjamin Hardin, was specially retained by the families of Rothwell and Redding. For the defense no less than eight lawyers appeared, several of them leaders of the Kentucky bar, and one, Seargent S. Prentiss, the great forensic orator of Mississippi, who came from that State to defend the men who were his clients, his fellow citizens and his friends. The speeches on both sides attracted marked attention in all parts of the land at the time, and while not at all in accord with our standards of public speaking at this day, are good specimens of the style of oratory so much admired and so effective in the West and South fifty years ago. The opinion has often been expressed that the address of Seargent S. Prentiss is the greatest effort of this remarkable orator, and has rarely been surpassed in this or any other country. The appeals to Kentucky chivalry, to the disgrace of receiving a blow without returning it with a stab and to the beauty and sentiment of the women of Kentucky were effective. The jury returned a verdict of not guilty after only fifteen minutes absence.[5]

[5] "Whilst making ready to leave Natchez, I fell into company, by accident, one morning, at the hotel where I was staying, with a young gentleman who at the very first sight impressed me with a deep and peculiar interest. He was apparently in delicate health, and was evidently suffering also from serious depression of spirits. He gave me some account of his personal history, which I found to be not a little tinctured with romance, and marked with several incidents well calculated to awaken feelings of tenderest commiseration. He had a special claim upon my sympathy by reason of the fact that he was, like myself, a native of Virginia, and a friendship at once sprang up between us which lasted, without the least abatement of kindness on either side, up to the period of his lamented decease, some seventeen or eighteen years ago. I refer now to Edward C. Wilkinson, a consummate scholar, an erudite lawyer, and an upright and pious gentleman. After having achieved much success in his profession, and after having surrounded himself with multitudes of friends and admirers, he became involved in a tragic affair in the city of Louisville, Kentucky, of most melancholy import, which resulted in his being tried for murder, amid the raging of a furious local excitement, and in his being, in the end, honorably acquitted. This case is one of marked celebrity, and in defence of Judge Wilkinson, S. S. Prentiss made, in association with

THE TRIAL[6]

In the Mercer County Circuit Court, Harrodsburgh, Kentucky, March 1839[7]

HON. JOHN L. BRIDGES, *Judge.*

March 11.

Edward C. Wilkinson, John Murdaugh and Benjamin R. Wilkinson having previously been indicted in Jefferson

the celebrated John A. Rowan, one of the ablest speeches of his life—in opposition to Benjamin Hardin, whose extraordinary powers were most vehemently exerted in order to bring about a conviction." Foote Bench and Bar of the South and Southwest, St. Louis, 1876.

[6] *Bibliography.* * "Trial of Judge Wilkinson, Dr. Wilkinson and Mr. Murdaugh on indictments for the murder of John Rothwell and Alexander H. Meeks. Reported by T. Egerton Browne, Editor and Proprietor of the *Louisville Daily Reporter,* Louisville, April, 1839." This report was reprinted almost in full as an appendix to * "The Law of Homicide. By A. B. Carlton, Formerly Prosecuting Attorney and Circuit Judge in Indiana. Cincinnati, Robert Clarke & Co., 1882." The author says he has long been of the opinion that the publication of some celebrated criminal trial with all the proceedings accompanied with notes and commentaries would be useful to the bar and to the student. This one he selects as one of the most interesting criminal trials that ever occurred in the United States. "The circumstances attending the Galt House tragedy, the high character and position of the defendants, and above all, the celebrity of the leading counsel engaged in the cause, invest this remarkable case with a deep and abiding interest and entitle it to be preserved in a permanent and durable form as one of the *causes celebres* of America. All of the actors in this drama of real life, have (it is believed) passed away. The fame of those renowned lawyers and orators is preserved mainly by tradition and hearsay. Most persons of mature age in the West and South have heard of those celebrated advocates, while a few veterans yet lingering on the stage have heard their forensic efforts." In addition to the report the reporter prints a letter from John W. Redding written before its publication in which the writer says that if the speeches of the counsel in full are to be printed they will contain libels on his character and he therefore claims space in the book for a certificate of character which he encloses from persons in the city where he has spent his whole life, and which may be placed in contrast with the slanders. The reporter concedes this and prints a testimonial of sixty citizens of Louisville that his "uniform character and standing in society has always been and continues to be of the highest order for integrity, industry, veracity and unimpeachable honor."

[7] The killing took place in Louisville, Jefferson County, but by

County for the murder of John Rothwell and Alexander H. Meeks, the trial came on to-day.

Edward J. Bullock and *Benjamin Hardin*[8] for the Commonwealth.

John Rowan,[9] *S. S. Prentiss,*[10] *Colonel Robertson, Samuel Davis, John B. Thompson,*[11] *Charles M. Cunningham, James Taylor* and *Charles Wickliffe*[12] for the defense.

When the jurors were called six were put aside by the Court for having formed opinions and four were challenged by the defense. The Prosecution made no challenges. The following were selected and sworn: Benjamin Alsop, R. M. Davis, Buckner Miller, Robert Alexander, John Bowman, John Burton, Elijah Gabbott, John Bohan, John Adair,

special act of the Legislature on the petition of the prisoners, the venue was changed to Mercer County.

[8] HARDIN, Benjamin (1784-1852). Born in Pennsylvania. Moved to Kentucky, 1808. Member State Legislature, 1810, 1811, 1824, 1825. State Senator, 1828-1832. Member of Congress, 1815-1817, 1819-1823, 1833-1837. Secretary of State, 1844-1847. Member State Constitutional Convention, 1849.

[9] ROWAN, John (1773-1843). Born in Pennsylvania. Admitted to Kentucky Bar, 1795. Member of Constitutional Convention, 1799. Secretary of State, 1804. Member of Congress, 1806. Judge Court of Appeals, 1817-1821. U. S. Senator, 1824-1830. He attained a high rank in his profession. "Kentucky even at that date contained many men of talent, learning and eloquence, yet he was considered one of the foremost."

[10] PRENTISS, Seargent Smith (1808-1850). Born in Portland, Me. Graduated from Bowdoin College, 1826. Removed to Natchez, Miss., 1829, and was admitted to Bar. Settled in Vicksburg, Miss., in 1832. Member U. S. Congress, 1837. "From his settlement at Vicksburg his career as a lawyer was one of remarkable success and it was hard to say in what department of his profession he most excelled whether in varied contests of the nisi prius courts; in argument in a difficult question of legal construction or in discussing a fundamental principle of jurisprudence." He was also one of the great orators of Congress, and when he was to speak the galleries were always crowded.

[11] THOMPSON, John Burton (1810-1874). Born in Harrodsburgh, Ky. Representative in Congress from Kentucky, 1840-1843, 1847-1851. United States Senator, 1853.

[12] WICKLIFFE, Charles A. (1788-1869). Born in Bardstown, Ky. Served in the War of 1812. Member of Kentucky Legislature, 1813, 1823. Member of Congress, 1823-1832, 1861. Speaker Kentucky Legislature, 1834. Lieutenant Governor, 1836. Postmaster General, 1841.

Elineazer McGoffin, Charles Humphries and Jacob Vanarsdall.

The clerk having read the indictments and the prisoners having pleaded not guilty, the JUDGE charged the jury to hear the evidence and give a true verdict according to the same.

WITNESSES FOR THE PROSECUTION

John W. Redding. Am a tailor in Louisville, Ky. My shop is on the corner of Third and Main streets one square from the Galt House. In December last Dr. Wilkinson called at my shop and ordered a suit of clothes to be ready the following Saturday; he also ordered an overcoat to be ready the next week and a pair of pantaloons. He said he would call on Saturday for them. I finished the clothes, folded them on the counter to send to the Galt House. On Saturday afternoon he came to my store, took off his old coat and tried on the new one, which he seemed to like very well, merely remarking that it was a little loose; but he had been sick and had fallen away, and hoped soon to fill it up. He took the things out of his old coat pockets and put them into the pockets of the new coat. Told me to send the pantaloons and vest to the Galt House, and handed me a $100 Mississippi bank bill, which he requested me to hold over for a week or two, as the discount in a few days would be considerably reduced and in an hour or so returned with his brother Judge Wilkinson and Mr. Murdaugh. He said he would have to throw the coat on my hands as it did not fit and his friends had told him it was badly made—not fashionable; the Judge also said about its not being fashionable. I offered to make any alteration. He said no, that it was no coat at all. I said I would keep it. The Doctor then took out some money and said he would pay for the pantaloons and vest—which had been sent to the Galt House. The Judge said, no, do not pay for them, perhaps they would not fit, they would be like the coat. He and Murdaugh had more to say against the clothes than the Doctor, who, I saw, would be pleased enough only for them. He said the law was, that if a coat did not fit it should be taken back. When the Judge interfered so much, I said it took more than one to judge a coat, and that I thought he had already said more than he ought. The Judge, who had been sitting near the stove, then jumped up and said he did not come there to be insulted. I said I did not intend to insult him. He snatched up the iron poker and struck me on my arm. Hearing something about a Bowie knife, I tried to get them to the street where some one would be passing, and seized the Judge and jerked him to the side door, near the corner. As I got to the door I slipped and fell, and the Judge fell with me. I thought the whole three were on top of me, and struggled till I got the Judge under me, and I raised to keep off the Doctor, or to pull him down, when he tried to stab me with his knife but was prevented by some one. The Judge still held on to the poker. When the Doctor drew his knife

on me, a voice quite near, which I thought was Murdaugh's, cried out, "Kill the damned rascal." Then some one ran up and held the Doctor's arm. I threw them off and got out on the pavement. Murdaugh was on the pavement with his knife drawn. I picked up a brickbat, and told them I would whip the whole three if they would lay aside their weapons. I returned into the shop, and the Doctor followed me in with his drawn knife in his hand, demanding his $100 bill. In the scuffle I had lost my pocketbook, in which it was, but some one who had picked it up, handed it to me, and I gave the Doctor his $100 bill. They went away with the knives drawn, and the Judge carried off the poker. Several persons came into the shop after they had gone, and some advised me to get them taken up. Did not want to do so, but was persuaded to go to the Mayor's office with Bill Johnson; before this I went to Mr. Fulton's store and got a small dirk knife from Mr. Noel, which I put into my watch pocket. We called at Vacaro's and Hymen's coffee houses to inquire for the Marshal, Mr. Turner, or one of the police officers. Not meeting them, we went to the Mayor's office. Told the circumstances to Mr. Pollard, the police clerk, and that I wanted a warrant. He asked me for the names. Said I knew one was Wilkinson, but could get the names at the Galt House. Mr. Pollard said he could not give me a warrant without the names, but Mr. Turner could arrest them without a warrant. Told him that I would go to the Galt House for the names. We then searched for Mr. Turner but could not find him. Bill Johnson went into the jail to inquire for Mr. Turner, and I staid on the outside. Saw Rothwell, my brother-in-law, standing at Dr. Bernard's office, and told him what had happened. He went along with me. Not being able to find any officers, we proceeded to the Galt House, went into the bar-room and asked for the register and the names of the three Mississippi gentlemen. Mr. Everett came in and gave me the names on paper. Got to talking with Mr. McGrath, who was inside the counter, and told how I had been treated at my own store. Judge Wilkinson came into the bar-room, and up to the counter to take a glass of water. Leaning on the counter, I said to him: "I think you are the gentleman that struck me with the poker in my own house to-day?" He said he was and then said: "I will not quarrel or fight with a man of your profession, but if you interfere with me, or lay a hand on me, I'll kill you." He put his hand behind him, as I thought, for some weapon. I called him a coward for coming to my house with two others to assault me; and offered if he and they would lay aside their weapons, and come into the street or into a room, to whip the whole three. He walked backwards and forwards across the room, and I kept telling him what I thought of him. He passed out of the bar-room but was gone but a little while when he, the Doctor and Mr. Murdaugh came in. Murdaugh came towards me. I remarked to him that he was the man who had drawn his knife on me in my own shop. He said if I had said that he had drawn a Bowie knife on me, I was

a damned liar, and he threw up his hand with a drawn knife in it. I think some one remarked that he was the man, for he had seen him. The fight then began and the crowd rushed so close about Murdaugh and the others, that they were hurried past me, and I could not see what was doing. Know Meeks was killed, but did not see him killed. Mr. Rothwell came up when he heard the damned lie given, and pushed me back with his arms, which caused me to be outside the scuffle. A little while after that, Judge Wilkinson with a large Bowie knife in his hand came hurrying past me. The knife he had was like this; I think it is like the same knife. [*Mr. Hardin* handed the knife to witness. It was from eight to ten inches long in the blade, two inches wide, heavy, and shaped at the point like other knives of that name.] He came rushing by me stabbing at several persons. By that time Holmes had Dr. Wilkinson down in the left hand corner of the room. Judge went towards the door, and Meeks was lying in the opposite corner. The crowd was retreating into the passage and making towards the stairs. Seized the chair but fearing I might hit the wrong person, I did not make a blow. At the foot of the stairs, I heard Mr. Oldham say that he'd give the damned rascal a pistol, and a pistol was fired, but I did not then know by whom.

Mr. Hardin. Was the poker large enough to kill a person with a blow? Yes. What did you observe of Rothwell in the passage? He told me that he was very badly stabbed. How long did Mr. Rothwell live? Till next evening. He died at my house. Where did you first see Mr. Rothwell that evening? I met him in Dr. Bernard's office, in Market street; he was my brother-in-law. Did not ask him to accompany me at all. He merely kept on with me when I told him what had happened. What object had you and he in going to the Galt House? No other design than to get the names of the three Mississippians. When you went into the bar-room, did you tell Mr. Everett your object? Yes. Did you display the dirk at the Galt House? No; I never drew it from my watch-pocket. Mr. Rothwell was not in the room when I first spoke to Judge Wilkinson. Did not see the blow inflicted on Rothwell that caused his death. The crowd shut me out from seeing distinctly what was doing. I found one of the knives on the floor, when the fray was over. Where did you next see these three knives? I called at the jail and asked Mr. Chenoweth if the knives were there. He said yes, and produced them. There was blood on the three knives at the time. Told Mr. Chenoweth at the jail to keep them with the blood on them, just as they were. He gave them to me rolled up in paper, and I put them away in my trunk. [Here the jury examined the knives.]

Cross Examined by Col. Robertson. Neither Meeks nor Rothwell were at my shop. It was half an hour and an hour between the affray there and the one at the Galt House. Johnson went with me to the Mayor's; he left me near the jail and I saw him next at the hotel. I borrowed after the first affray a

dirk knife from Mr. Fulton, fearing an attack. Did not ask Rothwell to go with me to the Galt House. I went there simply to get the names. After I got them I stayed about fifteen minutes when Judge Wilkinson came in. I merely remarked that he was the gentleman who struck me with the poker. He said he would not quarrel with a man of my profession. Then I told him what I thought of him: that he was a coward. He walked up and down a bit and then went out. I waited for the marshal. If Rothwell had a stick I did not see it. I have employed Mr. Hardin to assist in this case and am to pay him $1000. Did not agree with Johnson to meet him at the Galt House. On the street I had met Mr. Holmes, Mr. Wallace, Mr. Halbert and Mr. Oldham. All other friends of mine were at the Galt House, Mr. Monahan and Mr. Reaugh among others. I saw no sword cane at the Hotel; saw the Judge stabbing at Rothwell and others. We pursued him into the passage and to the stairs about twenty or thirty feet from the bar room. Don't know why so many of my friends were at the Hotel. Holmes nor Johnson do not live near the Galt House. Did not draw the dirk when I was attacked. Mr. Halbert boarded at the hotel. It is usual for people to congregate at the Galt House after supper. Had no intention when I spoke to Judge Wilkinson of reviving the quarrel. Neither Rothwell nor Johnson or Meeks ever suggested to me the propriety of "giving them a little throwing over to teach them better manners." I have sued the prisoners for damages. There is a coffee house in the same building as my store. It is kept by my brother.

Thomas Craig. Was in Redding's shop on the day of the affray. Dr. Wilkinson tried on part of the suit of clothes made for him, not seeming to make any objection to the coat. He left a $100 bill, and his measure for an overcoat, and said that he would redeem the $100 bill and pay for the whole of the clothing. Took away the coat on him, and returned in about an hour and said he would leave the coat on Mr. Redding's hands. He said he found a deficiency under one arm. The Judge made a great many objections to it. He said it was not a fashionable coat; it had not a proper collar, and that it was no coat at all. Went myself up to the mirror with them to look at the fit of the coat. The Judge came around to the stove and sat by it. Can not recollect what was said; but the coat was returned, Doctor took out money to pay for the pantaloons and vest, when the Judge remarked that he ought not to pay for them till he would know how they might fit—that they might be like the coat. The Judge sat on a high stool at the stove. The Doctor was near the cutting board. When the Judge made the remarks about the pantaloons Redding retorted he had more to say about them than he ought; upon which Judge Wilkinson picked up the poker and struck Redding, and Redding jerked him to the side door. Redding, after being out on the street with them, picked up a brickbat and said he would whip the whole three if they would lay by their weapons. Saw Mr. Murdaugh standing on the edge of the pavement with his

knife drawn. Did not see the Doctor have any knife before he left the shop..

Cross-examined. Did not hear the damned lie given before Judge Wilkinson picked up the poker, nor did I see Redding walk up to the Judge in an offensive manner. The Judge was sitting and Redding standing when the Judge picked up the poker. The Judge said that the law was, that when the clothes did not suit they were to be thrown on his hands. Redding replied that he had rather more to say about it than he ought. The Judge said he did not come there to be insulted. Redding appeared to me to be very mild. Did not hear Redding say "who are you," or "you are too officious." It was after dinner about three or four o'clock. There were not many at the shop until after the affray; after that several were there and advised Redding to take the law of the Mississippi gentleman. Think Holmes was there. Did not notice Meeks, nor did I then know Johnson. When some advised Redding to take the law of them he said he did not like to sue them. Did not hear anyone recommend him to take redress himself, with his friends. When the Judge struck at Redding the Doctor tried I think to separate them but he may have intended to assist his brother, it was difficult to tell. Did not see the Judge draw a knife. Can not say that I saw any knife but with Mr. Murdaugh, after Redding had picked up the brickbat. Various persons came into the shop before Mr. Redding went to the Mayor's office. I live with Redding and work in his shop. Did not hear Mr. Murdaugh say, "stop this fight."

W. Weaver. Was in Redding's shop, and saw the gentlemen talking about the coat. Mr. Murdaugh said he did not like the coat; the other said he did; one of them, the Judge, said he'd be damned if it did not take more than one to judge the coat. Judge Wilkinson called out for his knife. Dr. Wilkinson had a white-handled knife. Redding pulled Judge Wilkinson out of the door, and the Doctor followed. I think the knife on the table is the same I saw with the Judge when he came in from the street with the knife to get back the $100 bill. Heard some one halloo for the knife—it might be Redding.

Cross-examined. When the Judge told the other not to take the coat Redding said he did not insist on him taking it, and then Judge Wilkinson said that Mr. Redding had no right to judge. Redding said he had no right. Redding said he meddled more about the coat than the Doctor did, something like the Judge making himself damned meddlesome about the matter. Dr. Wilkinson pulled out money to pay for the pantaloons and vest.

Col. Robertson. Is this the Doctor or the Judge? (pointing to the Doctor.) The Doctor I think. Is this the Judge? It is. No one but the Doctor, Judge Wilkinson, Mr. Murdaugh, Redding and Mr. Craig, except another boy with me were in the store. One went in and went out again before the fight began.

The COURT. It is time to close for the night. What do you propose to do with the jury?

The *Counsel for the defense*

said they had no objection to the jury being allowed to retire and have proper accommodations.

THE COURT. Very well; let the sheriff take charge of the jury, and provide for them at a tavern. You, gentlemen of the jury, will take care not to converse with any person on the subject, or express any opinion concerning this cause, or to allow any one to address you about it, during your absence from court.

March 12.

Samuel Redmond. Worked for Redding and went to his store that Saturday afternoon to draw some money. Saw these gentlemen at the store. The first I saw was Redding pulling the Judge out of the door. He fell and turned under, the Judge being on top; but Redding succeeded in turning the Judge under, and the Doctor immediately attacked Redding with his knife, and Mr. Murdaugh cried out, "Kill the damned son of a bitch." As the Doctor was in the act of stabbing Redding, and the knife was within three or four inches of his breast, I seized the Doctor's arm and said, "Don't do that, if you please"; and then Murdaugh said, "Part them." Redding then got out into the street, with one shoe off and the other on; at the same time Murdaugh was on the pavement with his knife drawn. The Doctor entered the store with his knife drawn in his hand, demanding his $100 bill. Redding had dropped his pocket book in the scuffle, and I picked it up and carried it in to him; he then took out the $100 bill and returned it to the Doctor, saying, "Here's your $100 bill." They all then went off, two with their knives drawn, and the Judge with the poker.

Cross-examined. Am not in Redding's employment now. Did not say at the preliminary examination that I heard Redding give the lie in the shop.

Mr. Rowan. The minutes taken at the examining court have been transmitted through Mr. Redding's hands to the Prosecuting Attorney of this court, and it is only in courtesy and through the politeness of the Prosecuting Attorney that the counsel for the defense had been allowed the perusal of them. The Prosecuting Attorney has withdrawn these minutes. We now demand them as a public document.

The COURT. It is probable the right is regulated by Act of Assembly.

Mr. Bullock. The prosecutor does not stand upon that point; the reason I withdrew the minutes was that they were neither minutes of evidence nor even a synopsis of what had taken place at the examining court. They appeared to be nothing but a few memoranda made for the use of the Grand Jury, but so inadequate for any purpose in a final trial, that, finding they could not be available to either side, I decided upon not using them in the prosecution nor yielding them to the defense.

Mr. Redmond. No one went with me to the store. The Doctor would have stabbed Redding had I not held his hand. Redding had the Judge down and reached his arm to pull down the Doctor, when the Doctor raised

his knife to stab Redding as he was about to be pulled under by Mr. Redding. Did not see the knife till that time with the Doctor. He must have had it drawn and open before, because he could not have got his other hand disengaged to assist in opening it when Redding had hold of him. When these gentlemen were in the shop talking Mr. Craig was at his board. I saw a boy named Weaver there. I think it was between three and four o'clock. When Murdaugh called out "Kill the damned rascal," he stood on the pavement near the street. It was not till I caught the Doctor's arm, so that he could not make the blow, that Murdaugh said "Part them—don't let him kill him." There was a little time elapsed between his saying "Kill the damned rascal," and "Part them—don't let him kill him."

John Paris. Was passing Redding's store when I heard some fuss. I saw Redding fall out of the side door with one of the gentlemen. Another gentleman had a knife and said he would kill him. I said "Don't kill him," and a young man then caught his arm. After this Redding picked up a brickbat, and one of the gentlemen said, "Give me my money." He followed Redding into the shop and got the $100 bill. They returned to the street, and as Redding got to the door he said he would whip the whole three of them if they would put away their knives. The Doctor had the knife. Saw Mr. Redmond catch his arm. Saw Mr. Murdaugh there but he was not taking any part in the affair. Saw him after, on the pavement, with a drawn knife.

Cross-examined. The Doctor said "Damn you, I'll kill you." I said, "Don't kill him." He had not time to make the stab when his arm was caught. All three went into the shop, and when they came out Redding came to the door and said, "Lay down your damned knives, and I'll whip the three of you." "No," said Mr. Murdaugh, "I'd rather cut your damned guts out." One of the gentlemen came up and took him away. They went off with their knives drawn. It was between three and four o'clock. Am a coffee-house keeper.

Mr. Everett. Mr. Redding applied to me for the names of three Mississippi gentlemen, one of which, he said, was Wilkinson. I gave him the names. Asked him the nature of the difficulty. Later I was told by Mr. Snead that there was likely to be some difficulty, upon which I returned and saw Judge Wilkinson walking up and down the bar-room, very much excited. Redding was addressing the Judge. Tried to get the Judge away, and asked him to go with me to his room, which he did. We found his brother and Mr. Murdaugh there. The Judge asked me if I had pistols. I said no and he asked me to get him some. Said I would try and went down to the bar. In about ten minutes saw the Judge enter the bar-room, and I then put on my hat and walked out of the house. His room was on the first story above—room 35. The bell had not been rung for supper when the Judge came down to the bar-room the second time. It rings for supper at half-past five or near six o'clock. I saw no part of the affray when the Judge re-entered the bar-room. I picked up my hat and

went away. The difficulty was over when I returned.

Cross-examined. There was a good deal of excitement. There were many strange faces in the bar-room that evening. When I asked the Judge to walk up, he immediately consented, and we went up the public steps. I saw the Judge was greatly excited and I thought it my duty to prevent a quarrel. Did not notice whether Mr. Redding was excited. It is usual for those who are boarding to assemble in the bar-room a short time before supper. Only one bell is rung for supper. The practice of the house is to collect in the bar-room before the supper is ready; sometimes there is delay; sometimes none. It has been the case that if a person did not rush in he would be late for supper. It was about 5 o'clock when I noticed those strange faces in the bar room. Redding first came to the Galt House to ask for the names about four o'clock. The affray took place about six o'clock. Mr. Snead told me that there would probably be a difficulty; on that account I wished to take the Judge away. I did not infer danger from any particular person or collection. Did not hear Judge Wilkinson on reaching his room exclaim, "Great God! we claim from you the means of our protection." Meeks, Rothwell, Johnson, Holmes and Oldham were not frequenters of the house. Monohan was often at the house. Mr. Reaugh is sometimes there. From what I had heard of the affair at Redding's store, the assembly of persons, and the words between Redding and the Judge, my apprehensions were excited. Mr. Marshall Halbert was boarding at the Galt House at that time. If the affray had not happened at Redding's shop the assembly of strangers in the bar room of the Galt House that evening would not have attracted my attention. Judge Wilkinson had been at the Galt House many times before. Had always been a retiring gentleman of inoffensive manners. A number of boarders who do not lodge in the Galt House assemble in the bar room for supper. Other citizens assemble there to hear the news and look over the book of arrivals.

John Lucas. Am one of the city officers that arrested these gentlemen. I did not see any of these knives at the time.

Robert Pope. Was in the Galt House that evening. Boarded there at that time. There appeared to be a great deal of excitement. Many persons in the bar room not usually there. Was behind the counter when Redding came in with a paper in his hand and pronounced Judge Wilkinson a damned rascal, liar, swindler and murderer. Shortly after the Judge entered; he came towards the counter where the glasses and decanters were to take a glass of water. Redding said he was the gentleman who struck him in his shop that evening. The Judge said he would not fight him or quarrel with him, but if he touched him or laid a hand on him he'd kill him. Redding then called him names and abused him. The Judge walked up and down the room and then left it. Later Judge Wilkinson returned into the bar room with Murdaugh and the Doctor. Murdaugh came towards Redding and Redding remarked you are one of the damned rascals

who attacked me at the shop with a bowie knife this evening. Murdaugh said, "If you say I attacked you with a bowie knife you are a damned liar, and if you touch me I will cut your guts out." Some one caught Murdaugh's hand and the fight commenced. Blows were struck at Murdaugh, and the crowd closed up as they passed round towards the dining room door. Immediately after, I saw Judge Wilkinson standing in the doorway with a bowie knife in his hand. Rothwell was standing a few feet from the door. The Judge looked a moment and then stabbed Rothwell under the shoulder. Rothwell was stooped a little—not as if fighting—but leaning over some one down on the floor. Instantly a fight commenced with raised chairs, and the crowd moved out of the room into the passage. I saw the knife enter Rothwell's back. His back was full toward me. I did not think Rothwell was doing anything at the time. He was five or six feet away from him when the Judge stabbed. The fight began with the altercation between Redding and Murdaugh. When Murdaugh came up to Redding he had his knife open in his hand; a Spanish dirk knife. Did not see Mr. Meeks killed. I saw him afterwards lying on the floor, and perceived that he was stabbed in the belly. There was a short cow-hide, or something that I took to be such, lying by his hand. My impression was that he had struck Mr. Murdaugh with that cow-hide, which caused him to be stabbed. He was expiring when I looked at him, and in a moment died—almost instantly as I looked at him.

Cross-examined. Was at the hotel for supper. Generally went into the bar room fifteen minutes before supper. When Murdaugh's hand was caught and he went towards the dining room door, I saw some blows given at him but could not say by whom, the crowd closed them up so. Had an impression that some one was using a stick at Murdaugh. Appeared to me that Rothwell was not interfering but leaning over something. Murdaugh had his knife drawn in his hand before any blows were struck at him and when he came up to Redding and Redding said, "You are one of the me who struck me in my house," I saw only two weapons, Mr. Murdaugh's and Judge Wilkinson's.

William Johnson. On Saturday evening went into the Pearl street House, kept by Redding's brother, who told me Jack was irritated at what had occurred at his shop. Saw Mr. Rowland, Captain Rogers and Mr. Norris there. Some one said the Mississippians were damned rascals and ought to be punished; and somebody else said there was a regular course to be taken. Redding said he had no one to go with him to the Mayor's office, and I volunteered to go with him. Mr. Pollard refused to give a warrant without the names. Redding called at Mr. Rothwell's and took him along to hunt for the names. Overtook Mr. Deering and he went along with me. I went on to Jack Redding's and learned Redding and Rothwell had gone to the Galt House for the names.

Went into the bar room and saw Rothwell standing at the fireplace with his back to the fire, and saw Redding at the counter getting the names. Invited Rothwell to come over to the City saloon and have something to drink, but he refused, saying he had taken something at the bar. Went myself and took Oliver and Meeks over, and we met Taylor at the door of the saloon, and we all went in and drank something. Taylor, Meeks, Oliver and I then went back to the Galt House. It appeared as if some excitement had been going on there. Redding was leaning on the counter, relating some circumstances and Mr. Murdaugh came in. The damned lie passed between them and Murdaugh struck at Redding, and made two or three blows at Meeks, who struck him with a whip or cane. They were then crowded toward the dining room door, and I saw Murdaugh strike at Meeks with his knife. Saw Judge Wilkinson make a thrust at Meeks too, and shortly after observed him fall dead. The Judge retreated back to the counter from which he had approached Meeks, and by the time he got back, Meeks fell dead. After Meeks fell, Murdaugh tried to escape out of the door, and the Judge passed between the dining room door and Meeks' feet, as if to make his escape after Murdaugh. The Doctor was down in the other corner and Holmes beating him with his fist, and Rothwell leaning over Holmes, saying, "Peace, gentlemen, for God's sake," and trying to get Holmes off the Doctor. When the Judge got to the door, seeing the fight in the corner with his brother, he turned back and made a lunge with his bowie knife at Rothwell, whose back was to him. Murdaugh and the Judge made their escape, and the Doctor got disengaged and made to the door, when Oldham was entering and the Doctor struck at him with his knife, and Oldham sort of shrunk from the blow, when the door closed and I saw no more.

Cross-examined. Did not see Meeks and Redding together at any time. When I proposed to Meeks, Oliver, Taylor and the others in the saloon, to have something to drink I did not say "Come, boys, let us take a drink and then let us go over and give these fellows hell." After these gentlemen were put in jail I did not go from house to house, proclaiming that they ought to be hanged. Many persons asked questions and I told them what I had seen, but always said let the law take its course. At the bar room think Meeks struck at Murdaugh first with the whip to keep him from using his knife. I had no weapon myself. Did not invite any one to go to the Galt House. Meeks was a small man.

Mr. Trabue. Boarded at the Galt House. Was in the bar room near the fire when some one observed that had not the Mississippi gentlemen gone up stairs they would have been badly treated. Judge Wilkinson came in and walked backward and forward two or three times greatly excited. Redding then entered and crossed the Judge's path. When Murdaugh entered, he was the first that spoke, saying, "I understand you say that I drew a bowie knife on you—if you say so you are a damned liar." Mr. Red-

ding said, "I don't know that you are the man, but one of the three did." Mr. Murdaugh replied, "If you or any one else say it was I, it is a damned lie." A little man, whom I knew afterwards to be Meeks, came up and said, "You *are* the damned little rascal that did it," and he struck at Murdaugh with his whip. About the same time, Rothwell struck Murdaugh, who had his knife open in his hand when he was first struck at. The crowd closed up on them, and they were hurried towards the dining room door. Shortly after, I saw the Judge stabbing about, with his bowie knife. Murdaugh, Meeks and Rothwell were in the middle of the scuffle when the Judge made toward them, and I saw him stab Rothwell in the back, or toward the side. Rothwell made a slight shrink on getting the stab, and sort-o' turned round to see who struck him. As soon as I saw Judge Wilkinson stab Rothwell in the back, Dr. Wilkinson was knocked up against me; and sometime after, Holmes had the Doctor down, and raised his head with one hand to strike him with the other. Halbert came up and addressed Holmes, saying, "You have beat him enough." Helped to separate them and the Doctor made his escape. Saw the Judge and saw a bowie knife glistening; they got out into the passage. Heard a pistol fired. The same moment saw Meeks drop dead. Rothwell came in with the blood flowing from his wound. He took off his coat with some assistance. Holmes and Dr. Wilkinson were fighting in the left-hand corner. The Judge, Rothwell and Halbert were fighting in the right-hand corner. My impression is that as Rothwell turned, the Judge made another stab at him but am not certain. Saw him repeatedly stabbing about with his bowie knife. No person was then molesting him. Had not discovered the Doctor till I saw Holmes beating him. Would have seen more of the fight between Meeks, Murdaugh and Rothwell had not Dr. Wilkinson been struck up against me. I did not see Rothwell again until he was walking from where Meeks fell toward the passage through the door. The pistol was fired and he turned into the room bleeding. At that time the room had been cleared.

Cross-examined. Some one besides Meeks struck at Murdaugh. Have an impression it was a large man like Rothwell with a stick or cane. Thought it was a polished steel cane that Meeks struck with. When Mr. Murdaugh was struck he was warning them not to strike him. His words were, "It is reported that I drew a knife on you and if any one says I did, he is a damned liar." Meeks came up and said, "You are the damned little rascal that did it," and with that struck at Murdaugh. Don't think there were five men in the house that did not expect a difficulty. It was considerably talked of all the evening. The only weapons I saw were the two knives, the whip, or what appeared to me to be a polished steel cane. When Murdaugh was struck with that cane it wounded his head. I do not think it possible that any one could see everything that occurred. The terror was so great that people fled from it.

Mr. Montgomery. I saw the

affair at Redding's shop. Was passing and saw two or three gentlemen engaged in the doorway. Redding appeared to have turned back on the pavement. Murdaugh was on the pavement too, and had a drawn knife in his hand. Redding said if they would lay aside their weapons he would whip the three of them. Murdaugh said he could not begin to do it, pointing his knife at him. Judge Wilkinson then came up and took Murdaugh away. It was between three and four o'clock. At the Galt House saw Redding getting the names. He was using very rough language. Mr. Halbert said there would be rough work with the Mississippians. Meeks was near Redding who was addressed by Mr. Murdaugh. Rothwell was next Redding. Murdaugh had his drawn knife in his hand and said, "if any one said he drew a bowie-knife, it was a damned lie." Meeks said "he was the damned little rascal that did it," and struck at him. Murdaugh tried to use his knife, but his hand was seized and he changed his knife into the other hand and made a stab at Meeks and cut him in the belly and his blood shot out upon my pantaloons and vest. I saw the Judge thrust his bowie-knife into Rothwell's back. The crowd dispersed and the Judge backed out toward the passage. I turned and saw Holmes pounding Dr. Wilkinson heavily. Halbert said to him, "Bill, you have beat him enough," and he and others took hold of him. Saw the Judge again appear at the door, and make a stroke with the knife at Holmes. I did not see the Judge stab Rothwell more than once. The Judge was using his knife freely. Did not see any one attempt to strike him till after he had struck Holmes with his knife, when Holmes and Halbert raised chairs against him. I too, raised a chair.

Cross-examined. Heard several say they would beat them well. The Mississippians were not in the room at the time.

Thomas Reaugh. Was drinking at the bar when I saw Redding talking to Rothwell. In a few minutes I saw Holmes. Redding was in conversation with Rothwell and I think with Halbert. Turned to Mr. Johnson and asked him if anything was the matter; he said yes, and told me about the difficulty at Redding's store. Remarked that if the Mississippians fell into the hands of these men they would fare rather rough. "Yes," replied Johnson, "they would skin them quicker than I could skin a sheep." Heard Mr. Miller say to Mr. Redding that if he'd get the names he'd attend to the matter in the Grand Jury. Shortly after, a gentleman came in and Redding turned to him and said, "I believe, sir, you are the gentleman that struck me with the poker?" He turned round and said, "Yes, sir, I am." Mr. Redding then used very rough language, when the Judge said, "Go away, or I'll kill you." The Judge then walked the room and passed out to meet Mr. Everett in the passage. He returned again and walked across to the dining room door. Think he had his right hand in the left hand pocket of his coat. A gentleman with a drab overcoat came toward Mr. Redding with a knife in his hand. He addressed himself in this way: "Sir, do you say I drew a bowie-knife on you?

If you say so, you are a damned liar!" Redding said, "I don't say it was you, but one of the three." Meeks came up and said, "You *are* the damned little rascal," and think he was making the blow with his whip as he said the words. Saw Mr. Meeks stagger to the northwest corner of the room. Saw him struck with a dirk and then fall. At the same time saw a fight in the southwest corner and Judge Wilkinson at the door striking the first blow at Rothwell, but it did not seem as if the blow could reach him, but as he turned a little the second blow did, and it appeared as if, at the time, Rothwell was in the act of taking off Holmes from Dr. Wilkinson.

Cross - examined. Rothwell took no part in the fight between Meeks and Murdaugh. Meeks seemed considerably excited when I first saw him that evening. Judge Wilkinson struck two blows at Rothwell.

Mr. Redmond (recalled). Passing the Galt House on my way home I heard pretty loud talk inside, which induced me to enter. Mr. Redding was abusing Judge Wilkinson, who remarked he did not want to have anything to do with a man of his profession, and if he laid hands on him he'd kill him. Mr. Everett catching his arm, told him he had better go to his room. He went out and in ten or fifteen minutes he returned, accompanied by Mr. Murdaugh. Mr. Redding said "You are one of the gentlemen who drew a knife on me." Murdaugh said, "You are a damned liar." Meeks said, "You are: I saw you myself." Murdaugh replied, "You are a liar," and made a pass at him with his knife at the same instant that Meeks struck him with his whip. Some one caught Murdaugh's right hand, and he changed the knife into his left hand, and the second thrust he cut Meeks in the belly. Meeks staggered backward and fell toward the counter. Was then making my way out of the room pretty quick, and as I was going by the crowd saw Holmes scuffling with the Doctor. The Doctor had a knife in his hand at the time. Rothwell was leaning over Holmes, begging him to get off. Holmes said, "Let me hit him one more blow." Judge Wilkinson was at the door, and made a thrust at Rothwell, and stabbed him over the hip, when Rothwell straightened up and exclaimed, "Oh! I am cut," and the Judge retreated out of the door.

Cross-examined. Did not tell a journeyman tailor who works for Mr. Davie what was to happen at the Galt House. I told him what had happened at Redding's shop. When the Doctor lay on the floor he was pretty well used up. From the way Holmes had him fixed he had no chance of using his knife Was in Mr. Redding's employment at the time.

James W. Garrison. Was at the Galt House that evening. Heard Redding tell a gentleman that Judge Wilkinson was one of the persons who had attacked him at his own house, and that they were cowardly fellows. Heard the Judge say to Redding, "I will not fight with a man of your profession; but if you interfere with me I will kill you." I said to Redding, that if I was in his place I would not interfere with these fellows. Another person observed, "Yes, I would get their names and put them under

city authorities." Redding replied that he had got or would get their names. In ten minutes the Judge returned and walked across the room with his right hand in his coat pocket. Murdaugh then spoke to Mr. Redding, and he turned round and said something very short to him in reply; directly the damned lie was given to what Redding said. The crowd closed on them. Was outside the crowd and did not see the knives. Saw blows struck, but could not tell upon whom.

Thomas A. McGrath. Was in the Galt House on the evening of this fight. When Judge Wilkinson came into the room Mr. Redding addressed the Judge in this manner: "Sir," said he, "I believe you are the gentleman who struck me with the poker in my house this evening, and you are a damned rascal; and if you will come into a room or the street and lay aside your weapons I'll whip the whole three of you!" The Judge walked up and down the room with his hand in his pocket. Came to the counter and took a glass of water. He then said to Redding he would not quarrel or fight with a man of his profession; but if he would interfere with him he would kill him. Advised Mr. Everett to take the Judge to his own room and the Judge left the bar room. Later the Judge, Mr. Murdaugh and Dr. Wilkinson entered the bar room again. Mr. Murdaugh came forward toward Mr. Redding, who said to him, "Sir I believe you are one of the men who drew a knife on me at my house this evening?" Murdaugh said, "Sir, I understand you say I drew a bowie-knife on you, and you are a damned liar if you say so," opening his knife. In a moment the crowd got round them and they moved down the counter. I could not well see what was doing. Redding moved down with them. Could see in the crowd, that blows were passing, but could not discern who gave or received the blows. Saw a knife with Mr. Murdaugh, and observed him striking with it, and thought he had killed Mr. Redding, when I saw a man fall. After that there was a general fight through the room. Saw Meeks fall but did not see the knife enter him. The first I saw of Judge Wilkinson after the fight began, he was standing near the dining room door, with his back to the door, a little stooped and holding his arm above with a bowie-knife, six or eight inches in the blade in his hand. He held his arm and the knife in his hand rather above the heads of the crowd, as if to make a passage. He passed through the crowd to the door and he turned and faced into the room. Then I saw him take a jump forward and make a thrust toward where Holmes, or Rothwell, I could not tell which, was engaged in the fight with Dr. Wilkinson. He returned from the blow and jumped forward, making another thrust, and again returned; and as he lunged forward the third time, Marshall Halbert took up a chair and told him to keep back, though I do not think he could have reached him with the chair from where he stood.

Cross-examined. Have known Judge Wilkinson for three years. Have heard a good many gentlemen speak of him before and since this transaction, and have always heard him spoken of in

the highest terms. Have been in the South this winter, and in his neighborhood, and have heard him well spoken of there.[13] Have made clothes for Judge Wilkinson and he has always treated me civilly. When in the South this winter I heard a letter spoken of, there, as having been written by Judge Rowan about the Judge. There was a great excitement, but can not say it was caused by that letter. A great many gentlemen spoke to me about this trial.

James W. Graham. Was passing the Galt House about dusk and saw Mr. Redding and Mr. Rothwell crossing the street alone; Mr. Rothwell probably ahead of Mr. Redding. Slapped Mr. Redding on the shoulder and thought there was something singular about his countenance. He turned round and shook hands with me.

Cross-examined. It was something unusual in Mr. Redding's countenance that caused me to take notice. Do not think there was any person in the street within a square of them at the time.

Dr. Knight. I did not examine the wound on Mr. Meeks. I saw it, but he was dead. Examined Mr. Rothwell—he had three wounds; one between the eleventh and twelfth ribs; the second through the seventh rib, separating it. Both wounds were through the spleen. There was a third wound in the chest near the collar bone, down to the right lung. Consider the wound in the chest caused his death. The wounds in the spleen contributed to death. The wounds through the spleen were made by a large knife; that in the chest by some small instrument. It was not by a bowie-knife. It was a small puncture—made by a very small instrument. About six or seven inches in length to where it penetrated. The wound was about as broad as the blade of this knife, and to the depth of from five to seven inches.

Cross-examined. The wound in the chest caused the death by suffocation. It is hard to tell what might have been the effect of the wounds in the spleen. It is not a vital organ; but wounds leading to inflammation might prove fatal.

Dr. M'Dowell. Am of opinion that all the wounds in Rothwell contributed to death; but the immediate cause was from the puncture on the right side. The other two wounds, in conjunction with that, contributed to death and in fact accelerated it.

Cross-examined. The puncture would not have caused death of itself. The lobes of one side afford sufficient respiration to sustain life.

Both wounds penetrated the cavity of the abdomen. The puncture on the right side must have been by a very slender instrument not more than half an inch in width. The lung was not

[13] This question was irregular. It was not a matter of cross-examination. After the Commonwealth closed, the defendants had a right to prove their good character. But as no objection was made, it was properly allowed. "What has been his general character" is too broad. The law requires (in such a case as this), that the inquiry should be confined to the defendant's general character for peace and humanity, or the reverse. Note by reporter.

penetrated. The puncture of the skin was very small, as with a dull blade. The perforation was from a third to half an inch in breadth. As to the wounds in the left side by process of inflammation, it might cause death; by process of suppuration the patient might recover.

Cross-examined. On attending Judge Wilkinson in jail with my partner, Dr. Powell, his attending physician, I saw his wound. Supposed it to be three or four inches, extending from near the shoulder blade towards the spine. It must have been the puncture of a very slender blade. Mr. Murdaugh's head had been dressed and the adhesive plasters were not removed. Dr. Wilkinson's face and head were greatly bruised. His face much discolored, and his eyes swollen till nearly closed.

WITNESSES FOR THE DEFENSE

Mr. Jackson. Was passing Mr. Redding's in the evening. I heard some loud talking. Went in and saw Johnson, Redding and Meeks. Johnson said to Redding and the others that they ought to go to the Galt House and flog them. He asked Redding to do so but Redding did not say anything. Johnson said, "Jack, just say the word and I'll go for my friend, Bill Holmes, and we'll give them hell!" and said he had as much manhood as ever was wrapped up in so much hide. Meeks said, "Let us go anyhow, and we'll have a spree." Redding said, "No; I'll see them another time and get satisfaction." Sometime after met Mr. Johnson in the street. He stopped me and said, "I am going after Holmes and think you ought to come to the Galt House"; that Jack Redding was a fine man and a good citizen, and that we ought to see him righted. I refused. I was not a man of that character, and I would do my own fighting and let others do the same. When he saw I was not a man of that character, Johnson said, "church, hell or heaven ought to be laid aside to right a friend." I told him he had better not have anything to do with these men. Meeks was not with Johnson at the time.

Cross - examined. From Johnson's talk I believed that a fight was intended. I heard Johnson talking loud; the high words brought me into the shop. Redding discouraged the idea of Johnson. I observed Meeks appeared to be excited, and directed his conversation to Mr. Redding.

E. R. Deering. Was passing down Market street about sundown. I saw Johnson, Holmes and others talking about Mississipi gentlemen who had treated Redding very badly. Asked Johnson what was the matter. He said he wanted officers to assist them, and I said he'd be late to get officers. He said there was enough gone there, and if they came down their hides would not hold shucks. Curiosity afterwards brought me to the Galt House to see what was going on. Found a good many persons in the bar room. Saw a gentleman with a drab coat coming in, and heard Redding say he was the gentleman that drew his knife. He said, "If you say so, you are a damned

liar," and Meeks came up and said, "You are a damned little rascal," and struck at Murdaugh with the whip two or three times. I then left. Johnson seemed much excited. He said the Mississippians ought to be taken out and get a genteel flogging. Mr. Holmes is a very large and stout man. Knew him for five years when I was captain of the watch. Considered him a very peaceable man, though reputed one of the stoutest men in Louisville. Halbert and Oldham are large men.

Alfred Harris. Met Johnson near my own house that evening with Mr. Shone. He told me about three Mississippi gentlemen who had insulted Mr. Redding, whose friends should go to the Galt House. He asked me to go. I said I would not. He said, "Are you a friend of Mr. Redding's?" I said yes; there was no man I felt more friendly to, but if he had been assaulted, as he stated, the law was at his side, and that the thing was so far past now that it was not worth while to go. He said, "Then you won't go?" and I said I would not. Heard no more of it till next morning.

Benjamin Oliver. Heard Meeks proposing to go to the Galt House I thought to stop him. He had his knife out, and I said to him, "Mr. Meeks, give me your knife to cut my nails." He gave it to me. He said he must go to the Galt House for he was bound to have a fight that night, and by G—d he'd have it. He went, and in some time came back and asked for his knife and I gave it to him. Some time after he came over again and wanting to get the knife; afraid he'd get into some scrape, I said it was strange he would not lend me his knife to pair my nails after so long an acquaintance. He said, "My dear sir, I thought you had done"; and he gave me the knife. He then started for the Galt House, saying he was bound for the Galt House that night and would go. He went. When I entered the Galt House I went into the bar room and saw that he was dead. Saw Mr. Holmes was wounded and a Doctor tying up his arm. Saw some fuss towards the stairs and a chair moving in the air. Meeks was a small man. He had been keeping bar for Mr. Dewees.

Mr. Miller. Heard that an affray had taken place and being on the city grand jury thought I would inquire about the matter. Went into the shop and asked for the names of those who had seen the fray, and got those of Craig and Redmond. Halbert came in and said a good deal of what he'd do. Went home and remained for some time and then went to the Galt House to my supper. Some one said I ought to leave the room or I'd see beef steaks served up. Shortly after I heard, "There they are—all three of them," and the crowd gathered to the counter. I left the room. While there, I heard a pistol fired. When I returned, the affair was over and Meeks was killed. Think it was Johnson that talked about the steaks.

George Waggry. Was in the bar room of the Galt House talking to Mr. Miller when some one said, "There is one of the men." Some one said to Miller, "We'll have some steak after a while for supper." Another person came along and said, "We'll

have a hell of a fight here just now." Miller advised Halbert to take away Mr. Redding. Shortly after, I saw the three men enter, and when the damned lie was given I saw Meeks strike at the smallest, and saw dirks and knives and canes in the fight. Some time after I saw Rothwell come round and blood flowing from his wounds. They all were strangers to me on both sides.

General Chambers.[14] Going into the bar room of the Galt House, I observed persons that I was not in the habit of seeing there. This created in my mind some suspicions. Shortly after Redding made use of opprobrious language to Judge Wilkinson, and the Judge said, "If you lay your hands on me I'll kill you." Heard some angry words, and the affray commenced. One of the persons broke off and got towards the supper room door, followed by Rothwell, beating him with a stick very severely. Rothwell partly lost hold of his stick and endeavored to catch a fresh grip, and on resuming his hold struck at the person again, when the Judge stepped up and made a thrust of his bowie-knife at him. Part of the language Redding used was, "You are a damned rascal and a coward and a pretty Mississippi Judge."

Cross-examined. The Judge made the first thrust of his bowie-knife at Rothwell near the dining room door, in the opposite corner from where Holmes had the man down. About twenty-four feet from the passage.

Mr. Donoghue. Was in the Galt House the evening of the affray. Saw Mr. Rothwell and other gentlemen at the fire in the bar room. Heard Mr. Rothwell ask some one—I think it was Redding—if they were there. He answered, "No." He then said, "Come, let us go up stairs and bring them down and give them hell!"

Cross-examined. Did not come back till all was over. Rothwell was lying in the bar room. I go to the Galt House often. I have some acquaintances there.

Wm. Sutherland. Was in the bar room. Heard a fuss and on turning, saw a crowd. Some one said there would be shooting and I got out of the room and tried to see through the window what was doing, but could not see distinctly. Remained at the window until Mr. Murdaugh came and got on the stair-steps, when some one struck at him, and he fell forward, but recovered and got up the steps, when some one fired a pistol up the stairs and I very quick got over the banister.

Joseph Brown. Went to the Galt House to supper. Saw General Chambers sitting at the fire. Miller was there also. The first thing that attracted my attention was Redding abusing Judge Wilkinson. Remarked to General Chambers that there would be some difficulty. Before this, Mr. Miller said to Redding, "Hush that stuff—it is

[14] CHAMBERS, John (1779-1852). Born in New Jersey. Governor of Iowa Territory. Member of Congress for Kentucky, 1827-1829 and 1835-1839. The newspaper report of the trial states that when Mr. Prentiss arrived with his carriage at the court house he was accompanied by General Chambers.

not the proper way—get their names and we'll have them before the grand jury"—a man stooped down to Mr. Miller and said, "Hush, you, Billy Miller, if it comes to handicuffs, the boys will settle it." I determined to leave the room, and as the gentlemen entered, I passed out and saw the crowd gather round them. Near the stairs I met Mr. Everett going out. I could see into the bar room through the window. The crowd was moving about, as if in a scuffle, in a kind of circle round the room by the dining room door. The first licks I had seen struck were by a large man with a stick. He laid on Mr. Murdaugh. Saw Dr. Wilkinson falling at the left-hand side of the fire-place. The room began to clear, the rush being made into the passage. Retreated to my room and out on the porch, and as I made a turn I saw Mr. Murdaugh was struck with a chair as he ascended the stairs, and Judge Wilkinson also had a chair thrown at him as some one hallooed, "Shoot the damned rascal," and immediately a pistol was fired. Saw Dr. Wilkinson when he was knocked down near the fire-place. I thought his head struck the grate. Business men congregate in the bar room about the time the stages arrive to learn the news by them, and see the names entered on the register.

Martin Raily. Was at the Galt House. Heard the conversation between Redding and the Judge as the witnesses have described. Saw Oldham with a bowie-knife, wiping the blood off it with his handkerchief. The stick the big man used when beating Murdaugh was a sword-cane. Saw the cane part fall on the floor, and the spear part remain in his hand.

P. S. Barber. This is a hat I sold to Mr. Murdaugh the day before this affray took place. It was then a sound hat. It must have been cut by some sharp instrument—in the side of the leaf, and also in the side.[15]

James E. Pearson. Went to the Galt House before supper time. Captain Rogers remarked to me that there would be a fight, from the crowd he saw. He asked where Major Throckmorton was. Thought I saw the Major talking to Captain Rogers, when I came back into the bar. Captain Rogers asked me, did I know who the persons in the bar room were? I said I knew Redding. Saw General Chambers and talked with him. Rothwell was there with a stick in his hand and Reaugh, Halbert and Holmes. Judge Wilkinson was walking up and down the room, and Redding abusing him very much, saying he was a pretty sort of Mississippi Judge; that he was a rascal, swindler and assassin. The Judge said, "My friend, you may say what you please, but I do not fight men of your profession." The Judge left the room and when he returned there must have been fifty men in the room, which induced me to go to the Judge and ask him to leave the room. He made a step or two with me to retire, when about twenty men were crowding in, and we heard some angry words, and the affray began. The Judge, turning and seeing this, said, "Sir, I can not

[15] A witness had taken this hat from the bedroom in the Galt House and kept it as evidence.

leave the room and my friends, till I see how this affair with these men ends." Saw persons strike the man with the drab coat, but think it was Rothwell struck with the stick. Observed some person catch a chair, and first thought he was taking up the chair to fight with, but soon perceived he was only leaning on it for support. Saw Meeks attempting to stagger toward the counter; when about half way, he fell forward. He was the person that had the cow-hide. Saw Judge Wilkinson make a stab from the door-way towards Rothwell. I think the stab was past Rothwell at Holmes, who was engaged with the Judge's brother. Holmes had his arm badly cut. The crowd generally goes to the bar room to hear the news and look at the register after supper. The boarders assemble in the bar room generally twenty minutes before supper time; sometimes less.

March 13.

Mr. Hardin asked the Court for instructions to the court-keeper not to keep such strong fires in the stoves (one at each end of the Attorney's bar, Mr. Hardin's seat being between the two stoves). The COURT remarked that as the gentleman did not like *to be placed between two fires*, there could be no objection to acceding to his wishes. (Mr. Prentiss sat rather to Mr. Hardin's left hand, and Mr. Rowan to his right.) *Mr. Davis*, hoped the Court would allow the stove to remain lit next the end of the bar appropriated for the gentlemen on the defense. The COURT said that the gentleman (Mr. Hardin) would not, of course, impose a greater degree of *coldness* on the opposite gentleman than they could bear; if they *felt chilly* they too ought to be indulged.

Henry Banks. Heard of the fuss at Redding's shop. Was told by a young man about the three Mississippians. Asked Redding if he was hurt. He said not. Asked him who they were. He said they were three Mississippians, and that he'd have satisfaction. He said he'd whip all three in a room. In about an hour a young man came to me and said there would be the damn'dest work at the Galt House in a short time that I ever did see. All I saw in the Galt House was Murdaugh knocked down on the steps, and afterward fired at. There were two balls discharged by the shot at him; one struck in the casing, and the other in the wall at the left-hand side. Oldham fired the pistol.

Dr. Graham. Was in the bar room of the Galt House. Saw the servants peeping into the bar, and guessed there was something going on. Saw the Judge and Redding moving a little backward and forward, abusing and calling hard names, such as coward, liar, villain and scoundrel, and saying, "he should like

to know in the name of God, who made him a Judge, and that he must have taken the title on himself; and that he was too big a coward to do anything right." He continued so long that I got tired, and turned to speak to some one. Judge Wilkinson paced the room, pulled his cap over his face, and assumed the philosopher, or tried to do it. He walked to the counter, put his cap before his face, one hand in his pocket, and walked along the counter, Redding going to the extreme exasperation all the time. Redding at last pulled his hand out of his pocket, and said he'd whip the whole three if they'd go into the street. The Judge said he did not wish to fight or quarrel with a man of his profession. Judge Wilkinson passed out of the room. Some one observed, "The damned rascal has run." Walked into the passage to go to the bar to inquire the cause of the quarrel; when in the bar I heard the word "lie," and "damned lie," in succession. Saw a small man, with a drab coat, holding a knife in this position with his back to the writing desk. I recognized him only as a small man, with a drab coat. He had a small knife, held that way, and spoke in a threatening manner. He hallooed out, "Stand back and don't crowd on me, or I'll kill the first man that rushes upon me." I thought he looked like a rattling viper that would say, "Don't step on me or I'll bite you." Heard other voices cry out, "Stand back, G—d damn you, or I'll kill you!" Saw a cane strike at his head. A crowd and general row commenced, and chairs were raised —some rushing in and some rushing out, and such confusion ensued that I saw no more of that part of the affair. Marshall Halbert came to the counter immediately after the affray, before the room was cleared, and asked me to drink. He said, "By G—d, I hoed a wide row this evening—we took it with a rush; Dr. Wilkinson, the first man that entered, I downed with a chair, and Bill Holmes mounted him and rode him around the room. The Doctor's back was to me when I downed him; it was rather bad, but, by G—d, I could not help it. Bill then pounded him so that he fell quite limber upon the floor, and I thought he was dead but the Judge came round and Bill took a chair, when the Judge, throwing up his arm, with his bowie-knife in his hand, struck Bill, and, by G—d, I thought his arm was cut off."

Cross-examined. Did not see Halbert performing those great actions he boasted of. I did not see him at all during the action. Think Halbert was bragging of more than he did.

S. S. Prentiss. Have been acquainted with Judge Wilkinson intimately, in Mississippi, for six or seven years. My profession has brought me into intercourse with him as a practicing lawyer. There is no man in the State whose character stands higher than that of Judge Wilkinson, for a modest and retiring disposition. Know this to be his character as a legislator and public man. Know his brother, Dr. Wilkinson, his character is of a very high standing in the State of Mississippi. The first time I saw Mr. Murdaugh was in 1836; introduced to me by Judge Wilkinson as a protégé of his. The Judge has acted for some time as his friend and guardian

and he accompanied the Judge as his friend on the occasion of his marriage. Mr. Murdaugh's general character is very good and stands high in every respect. I have never heard of his being engaged in any difficulty. Of Judge Wilkinson I can speak with the utmost confidence. As a circuit Judge, a distinguished member of the Legislature, a commissioner appointed by the State to go to New York on State business, and a public man, I know that no man ever stood higher in the estimation of the South. In his public capacity he has been particularly noticed for being free from anything like a controversial disposition. His general character is for being more retired and unwilling to meddle in controversy than others. I have been acquainted with him seven years.

Cross-examined. Mr. Murdaugh received license as a practicing lawyer last winter. I know nothing of his early history. Heard Judge Wilkinson make a speech at the election in Mississippi that rendered him unpopular, notwithstanding which he was elected.

Mr. Dawson. Formed an acquaintance with Judge Wilkinson a year ago. Live in Vicksburg. Have known him for seven or eight years. No man stands higher in his State in the affections and esteem of its inhabitants. Have never heard anything improper imputed to him.

Mr. Rowan, Jr. Visited these gentlemen in jail shortly after the affair occurred. They were very much bruised and they had wounds and blood on them. The Doctor particularly was very much bruised and cut. Mr. Murdaugh also was very much cut, and there was a good deal of blood about him. Mr. Murdaugh had accompanied Judge Wilkinson from Mississippi. The occasion was the Judge's expected marriage. The marriage was to take place about a week after this affair.

Mr. Everett. The gentlemen all arrived together at the Galt House about a week before this affair. The marriage was to take place the Tuesday succeeding the affray at Louisville. The preparations for the wedding had been made.

Franklin Roberts. Happened to enter a coffee house on Christmas morning and heard gentlemen talking of this affair. Mr. Oldham was one. Heard him say that Holmes came out with a chair, Oldham following the Judge, and that he, Oldham, took a pistol out of his pocket and fired at the Judge. Some one asked if it was his pistol; he said, "No, it was my pistol and I fired it, and I wonder it did not hit him for it had two balls in it."

Thomas A. M'Grath. The fight was over before Mr. Holmes' arm was dressed. Do not know Mr. Oliver. Know Mr. Deering. Never heard anything against his character.

Mr. Redding. Do not recollect seeing Mr. Johnson at my shop that evening at all.

Mr. Craig. Did not see Jackson in Redding's shop that evening. Did not hear Johnson say he would go for Bill Holmes and give the Mississippians hell.

William Johnson. Did not see Jackson at Redding's that evening.

J. W. Graham. Know Jackson. Was a carpenter and he

served three years of his time to me. Would say he is a man of middling character. Have no confidence in a man's veracity whose integrity I have no confidence in. I have had some dealings with him. Have known Oliver a long time, and have heard his character spoken of. It was not very good—it was very bad—and I know it would not be entitled to any credit in the city of Louisville. Know Mr. Redding. His character for integrity, industry, and veracity stands as high as that of any man in the community.

Cross-examined. Mr. Jackson served part of his time to me. Is a hard-working man when he does work. We had differences, but not of late. Have at different times advised him to change his habits —of late particularly. Do not know that he is now a member of the church. Would not call him industrious, though he works hard by spells. Eight or nine years ago Mr. Jackson and I had a fight. He has a wife, but I do not know whether he has children or not. Have heard many people speak very hardly of him. Have no unkind feelings toward him myself. He knows that I have within the last year advised him to change his habits, and have pointed out how he would prosper if he did so. His habits are, that when he has a job, he works hard, and then any sport carries him off to the neglect of his business. I doubt his veracity from what I have heard his acquaintances, and men with whom he has been dealing, say of him. Thought the affray at the store a most outrageous affair, but took no part about it. Spoke of it on several occasions as an outrageous act that ought to be punished severely. I spoke yesterday of the outrage being dragged off here. I said if the Legislature were in hell, and I a fireman, I would give them a good warming, because I felt aggrieved at being brought this distance from home. Did not hear of the Galt House fuss till next morning.

Mr. Reaugh. Know Mr. Oliver by sight. Have no personal acquaintance with him. His reputed character in Louisville is not very good.

Mr. Trabue. Judge Wilkinson when he entered the bar room walked two, three or four times across the room. He had his hand behind, and stopped in the middle of the room, a little nearer the dining room door, and seemed to face the corner where Redding was standing. He threw his head up and cast his eye at Mr. Redding, and then at the door, as if on the lookout, and greatly excited. About that time Mr. Murdaugh spoke to Mr. Redding. Saw Mr. Halbert do nothing but tell Holmes he had beaten the Doctor enough. He was wanting to take Holmes off the Doctor. Heard Halbert say that when he had knocked down the Doctor, Holmes jumped on him. Am satisfied Halbert was only bragging and that he did not do it. I could not say a crowd followed Redding in. I thought seven or eight men did.

Henry Oldham. Was going in the bar room when Dr. Wilkinson, was rushing out, and cut me in the arm, and I knocked him down. Holmes then came to the passage with a raised chair, and struck at the Judge, breaking the chair against the door. The Judge ran to the stairs. Holmes

struck Mr. Murdaugh at the stairs with the chair. Mr. Murdaugh got up towards the head of the stairs and hallooed for his pistol. That put me in mind of my pistol, and I took it out and fired it at him. There was no concert for me to go to the Galt House that evening. Knocked the Doctor down because he had cut me in the arm. Knew none of the gentlemen. Why he cut me I am unable to tell. Am confident he never saw me before.

Cross-examined. Saw Holmes, Rothwell and Halbert in the bar room. They asked me to take some liquor, which I did. A gentleman asked to see me, and I went away with him. We were talking outside, where I could hear chairs rattling, and then on trying to go into the bar room, I got the cut in the arm. Was in the bar room that evening before any fuss began at all. Was cut with a dirk knife. Had not given the Doctor, by word or gesture, any cause for doing it. Went there accidentally—it was on my way home. Fought on my own hook. When he hallooed out for his pistol, I took advantage to get out mine and fired at him. Was stabbed first. Had a bowie-knife. Usually carry a bowie-knife and pistol about me since I belonged to the City Guard last summer. The button on the scabbard came off, and it slipped through my pantaloons. There could be no blood on it, but it had a red scabbard, which may have been mistaken. Did not wipe blood off with my handkerchief. A gentleman at Zanone's coffee house asked me to show him a bowie-knife, and I showed him mine. Did not hear of the affair at Redding's before I went into the bar room.

Mr. Pearson. Have known Jackson as a carpenter for many years. He makes boxes and cases for dry goods merchants. Have formed a favorable opinion of him, and know that is the opinion of several other merchants. What his private associations are I do not know. Have not ever heard his veracity being called in question. Would credit him upon oath. Have no acquaintance with Oliver, and have not heard his character spoken of.

Mr. Miller. Am very little acquainted with Mr. Jackson. Consider him an industrious mechanic. Favorably impressed with his general character. Surprised to hear it doubted.

James M'Donald. Have known Mr. Jackson for a few years. He is sober. Never heard his veracity questioned. If he had been a man of loose habits would have heard it. Know Mr. Oliver. Never heard anything against his veracity. I seldom go to the theatre. Do not recollect ever seeing him there as a door-keeper.

Alfred Harris. Mr. Jackson's general character is fair. I have heard him spoken of in this way —that he is fond of conversation and as a person that says more than he ought. Would credit him on his oath. Know very little about him.

THE SPEECHES TO THE JURY

The evidence closed at half past eleven and the Court adjourned for dinner. It assembled again at one o'clock, the

court room crowded to excess—over one thousand spectators being present—among them three hundred ladies who filled the Judge's bench.[16]

Mr. Rowan suggested to the Court the desire of many citizens, that the hearing of the arguments might be adjourned to the adjacent church; to which, if the Court approved, the jury no doubt would consent, for the accommodation of the public and the ladies in particular.

The COURT conceived that no judicial proceeding would be proper anywhere, under present circumstances, but in the ordinary tribunal of the country, and although the mere delivery of arguments from the counsel was not necessary in the nature of a judicial act, yet some proceeding, or recalling of evidence, might be requisite, which would embarrass such a departure from the usual course. To accommodate the ladies, the Court would order the galleries to be appropriated exclusively to their use.

The gallery was accordingly cleared of men, and the ladies provided with seats.

Mr. Bullock. Gentlemen of the jury: You have gratified me by the attention you have bestowed upon the examination of evidence in this cause; and I feel assured from that, of your honest intention to do your duty in weighing that evidence and deciding upon it as becomes you. Yours is, indeed, no ordinary duty, and I know you are aware of your obligation. I would not have your feelings excited on the one hand or the other of this prosecution; but I would have you impressed with a proper conviction of the facts to enable you to do your duty between the commonwealth and the accused.

I, also, occupy a public situation here, to which the laws have assigned duties of no ordinary trust. I am required not alone to see that the laws be vindicated, but that the innocent should be separated from the guilty and protected from persecution.

If guilt exist, it is my duty to present the evidence of it to

[16] Of which the reporter of the day gallantly adds three-fourths were distinguished for great beauty.

you, together with the law applicable to the case; and if that evidence is so satisfactory as to bring conviction to your minds, you are required to decide according to the law and the facts.

You, gentlemen, have taken an oath that you have no interest, feeling, or prejudice, one way or another; and it behooves you, as honest and impartial jurors, to weigh well not only the evidence but the arguments for the commonwealth as well as for the accused, and according to your solemn oath a true verdict give.

In the opening of this argument I shall not enter into the depths of the case. I shall merely lay before you the law in relation to the alleged offense, that you may be enabled to judge of its violation from the evidence of the facts.

There are three individuals arraigned before you for separate and distinct offenses: Edward C. Wilkinson is now on trial for the murder of John Rothwell, and John Murdaugh and Benjamin R. Wilkinson for aiding, assisting and abetting. John Murdaugh is upon trial on another indictment for the murder of John Meeks; and the other two for aiding, assisting and abetting. You are to try both cases, for the evidence is applicable to both, and your verdict will apply to both. So far as your verdict and finding reach, it is immaterial whether you find one guilty of the killing and the others as accomplices, or the three together guilty, because, if you believe but one did the act, and that the others were accomplices, the guilt is the same in all, and it is immaterial which struck the blow that produced the death. It is also necessary to mention that if you believe one or two out of the three guilty, and the other innocent, you have the right to find your verdict against the guilty and to acquit the innocent.

It has been proved to you that two men were killed in the city of Louisville; that the blows were inflicted on them with deadly weapons, and that they died from the effects of those wounds. The laws of Kentucky afford protection to all her citizens. Two of these citizens have been slain, and your

first inquiry is—who committed this crime against our laws? Three gentlemen, now before you, are charged with this murder. I need not lose time in endeavoring to prove to you that one or more of these gentlemen inflicted the blows which caused these deaths, because, from the evidence you are bound to believe that the Judge or Mr. Murdaugh inflicted them, and that each participated in the act of the other. The question is—have they been guilty of any crime which the laws of the land will reach? and if they have, what that crime is designated. It is in the eye of the law homicide; and homicide is either justifiable or punishable by law. The killing constitutes the homicide, and that has been proved; but it is for you to say whether that killing has been murder, manslaughter or justifiable homicide. Although these gentlemen are indicted for the major offense—murder—you may, if the evidence justify you, find them guilty of the minor offense—manslaughter; or, even if the excusable homicide is proven, you may acquit them. But as they are charged with the commission of the crime of murder, it is necessary you should hear the law read as it exists in cases of homicide. In defining the law I shall endeavor not to set down aught in malice, neither shall I on the other hand aught extenuate.

Murder is one of the highest crimes known to our laws. It is defined by Sir William Blackstone, "When a person of sound memory and discretion, unlawfully killeth any reasonable creature in being, and under the King's peace (or as in this case in the peace of the Commonwealth of Kentucky) with malice aforethought, either express or implied."

That a killing has been committed it would now be a waste of your time to prove; you have it already established by the evidence, and it is not denied. The only question you have to decide, in addition to that fact, is, whether this killing was, or was not, the result of malice. Malice aforethought does not only mean "a spirit of hatred or malevolence to the deceased in particular, such as arises from former grudge or previous quarrels, and which is evidenced by lying in wait, &c.;" this is express malice; but it is not the only kind of

malice. "For the law meaneth by the term malice that the fact hath been attended with such circumstances as are ordinary symptoms of a wicked, depraved and malignant spirit, which carry in them plain indications of a heart regardless of social duty and fatally bent upon mischief."—See Foster, page 256, and Blackstone, page 199. The constitution makes you, gentlemen of the jury, the arbiters of life and death. You are to make a solemn enquiry into the causes which deprive by violence your country of the life and services of one or more of its citizens.

In all cases of death by violence the law implies that it is done by malice until the contrary is proved. Such is the shield thrown by the law around human life, that it raises a presumption of malice in the consummation of violence.

The law does not require in proof of malice, that there should have been a previous grudge, for it may arise at the moment of inflicting the deadly violence, or be inflicted upon persons, previous to the act, unknown to the slayer. On this occasion it is not necessary to prove that Judge Wilkinson or Mr. Murdaugh had ever known their unfortunate victims; if their act springs from "hearts regardless of social duty and fatally bent upon mischief"—and this is manifested in different ways, from the manner of the assault, the weapon used, and the probability that death would result from the blow. For, in all cases of homicide upon provocation, if it may be reasonably collected from the weapon used, or from any other circumstances, that the party intended to kill, or to do some great bodily harm, such homicide is murder. And right it should be; for he who carries a weapon calculated to take life, shows he broods over blood, and that he thinks with levity of taking the life of a fellow-being.

Nature itself revolts at the idea of death, and a thrill of horror runs through every nerve at the thought of imbruing our hand in the life's blood of a fellow-being; and he, therefore, who, with the impending glittering blade over an unarmed man, can strike with a deliberate intent to kill, is a monster—dead to the social ties, dead to the sympathies of

our natures and no longer worthy of human regard, or to the protection of human laws.

Gentlemen, it is not essential that there should have been any previous grudge or quarrel, or even a previous acquaintance. But if you believe the killing was done with a heart fatally bent upon mischief, and fraught with malice—and you must judge of this from the manner of the blow, the nature of the weapon, and all the other circumstances of the case—then it is murder, and you must so find, let your feelings be how they may—yea, even though you write your verdict in tears.

If you believe these gentlemen have been guilty of this crime, you are to consider whether any extenuating circumstances are in proof, and in mercy you are bound to regard those extenuating circumstances; but if you believe those circumstances are not of that weight which the law says is necessary to justify the taking of human life, you are not to be swayed from your duty by your feelings.

The counsel on the opposite side will endeavor to show you that there was a mob, or a concert of a mob, got up by Redding and his friends to assault these gentlemen at the Galt House. You will have the opinions of counsel on this point; but you must keep in mind that opinions are not evidence. Ascertain the facts from the proof, and consult your own consciences to make up your judgment. Recollect that you are here to try the law and the facts; and that you are not to mingle up with them that which is not legitimate testimony. I can compare the defense in this case to nothing but a boiling cauldron, into which a vast quantity of angry feelings and fermenting passions have been thrown; and it must be your business, gentlemen, to filter the truth from the dregs and scum with which it is intermixed. You are to ascertain whether, when the affray commenced and the fatal blows were given there was danger to these gentlemen of their own lives. That there was not, seems to me clearly established. The witnesses tell you, one and all, that there were strange faces in the bar-room of the Galt House. Well! what of

that? Is it an uncommon circumstance that there should be strange faces in the bar-room of a public hotel, the most extensive and most frequented in the western country? Almost on all occasions, at every moment of the day, there are strange faces to be met with there. That bar-room is the resort of every stranger attracted by the celebrity of the house and having business to transact in Louisville or its vicinity. If anything can be based upon this circumstance, I should be glad to know what supposition the gentlemen for the defense can raise upon it. When Redding was in that bar-room getting the names of these Mississippi gentlemen, what demonstration was there of a contemplated assault by others?—None! There is nothing in the whole case to warrant the assertion except the mere conjecture of some few individuals. Not a man produced here to testify the facts, not a man who heard and saw the whole transaction, has sworn that Rothwell, Holmes, or Halbert, then said a word to Judge Wilkinson. How then could he infer that they were to be engaged in any concert? When Judge Wilkinson went off after what passed between Redding and him, was he not suffered to go his way in peace? What reason could he have had to consider there was an individual except Redding who could have a particle of ill-will against him? Well, he left the bar-room, was met at the door into the passage by Mr. Everett, and retired to his own room. In doing so he passed unmolested, unobstructed, and on reaching his apartment had time to detail to his companions, Mr. Murdaugh and Dr. Wilkinson, all that had occurred between him and Redding in the bar-room. Without waiting for their comments or reply, he demands pistols from Mr. Everett. What did he want with pistols if not for attack? If he wanted them for defense, why did he not wait for them? No, gentlemen, Judge Wilkinson and his companions did not need pistols for their defense, or they would not have come down armed with their knives alone. They could not restrain themselves, so eager were they for the attack. They came down, and of what passed you are to be the judges.

I have satisfied you that there had been no concert—no scheme to assault these gentlemen. There is no proof of it, and it can only be inferred from conjecture: but are you to conjecture? You are forbidden by the law.

When Judge Wilkinson returned to the bar-room he had no right to suppose that he would be even addressed, much less assaulted, by any other person than Redding. In the absence of all proof that there was anyone desiring to attack him, who is there that even says he (Judge Wilkinson) was told that Redding's friends had any design of that kind? Did any witness for the defense prodigal of long stories of his thinking, tell him there was such a design? Not one. There is nothing in the whole case to justify the supposition. That some may have been there from curiosity is possible; but certainly none from design to assault.

Well, after coming down, Judge Wilkinson entered the bar-room accompanied by Mr. Murdaugh and Dr. Wilkinson. The Judge, after pacing the room, stood firmly and fixed his eye on Redding, while Murdaugh approached the latter, and, according to some of the witnesses, addressed him insultingly, at the moment throwing his knife open in a menacing manner. What immediately followed is known to you from the evidence. All have seen the subsequent transactions differently, yet they occurred in one way only. It is necessary to remark these conflicting accounts in order to arrive at the facts; and it will also be necessary for you to select from the mass of evidence the testimony of such men as you think have given their evidence without intent to pervert the truth: those who witnessed the transaction with the greatest quantity of self-possession and the clearest observation. Not such men as those who started and got away to the outside of the windows, though they may be honest, yet evidently having acted under alarm and trepidation sufficient to render them incapable of seeing calmly and dispassionately what occurred. It is natural to conclude that the excitement and alarm caused the different views taken of the transaction by different individuals. Some of these individuals, who re-

mained and retained their self-command, I know to be men who could look on and take in what occurred without much danger of misconception. I know Trabue and Montgomery to be such men, and I feel satisfied that Mr. Robert Pope, though not as well known to me, is of this number, if I may form an opinion from his manner of giving his testimony. I admit that most men are incapable of viewing coolly and deliberately the shedding of human blood; but that some men are more self-possessed under such circumstances than others will not be denied. It is surely more consonant to human sense to predicate our conviction upon the testimony of those who evince the most coolness and self-possession when their veracity is questioned. An additional reason why I attach great weight to Mr. Trabue's testimony is, that he expected the affray and was prepared to watch narrowly what was about to take place. He tells you that he had his eye fixed on Judge Wilkinson and Mr. Redding, at the moment his ear caught the words passed from a third person. He was watching these two that he might observe which would commence the expected conflict. Mr. Trabue's is the most consistent and rational account of what then occurred, and I adopt his view of it in preference to others, because I want a clear view only of the facts. Gentlemen, I seek not these men's conviction if they are innocent. It would be at variance with the trust reposed in me as the organ of government placed between the commonwealth and the accused. But if your verdict must be against them, though you write it in tears, justice demands that it should be rendered faithfully. What are the rational conclusions you ought to come to? I will tell you my conviction on that point, grounded on the evidence of Trabue and Montgomery and corroborated by others. When Judge Wilkinson had arrived in his bedroom; had told his brother and Mr. Murdaugh what had occurred between himself and Redding; and Mr. Everett had left them—these gentlemen deliberately agreed to come down and see the contest out. They were Mississipians—they had shown their knives, at least two of them, and a third, a large

bowie knife, had been added—and they descended for the work of death. They knew of no hostile foes below but Redding, for they could not know of any other; there was no reason to believe they could meet with any others in the bar-room, over whom they could crow and triumph, but Redding: and they did crow and triumph over him for it is in proof that he truckled under, when Murdaugh said, "I understand, sir, you say, or it is reported, that I assaulted you in your own house with a bowie knife. If you say so, you are a damned liar." Redding did not stand up to this like a man. He backed out by saying, "I do not say it was you, but one of the three did it." Is it like what a man backed by a mob would say? Is this like what a man surrounded by a company of friends would say? Gentlemen, it is impossible to believe it.

It is immaterial what part Redding took in the affray. The question is, what excuse these gentlemen had for taking the life of a fellow creature. It is my duty to show you what the law says in reference to killing and excuses for killing. I shall come to that presently. Murdaugh had his knife in his hand before any attempt at assault had been made on him. When Meeks approached him, what would any man expect but a blow? What kind of blow did Murdaugh receive from Meeks? Why, nothing but a blow of a short cow-hide over the head; and, unfortunately for Murdaugh, the law will not excuse him for resenting a blow that could not have threatened his life, by taking a life for that blow. I promised to show you what the law says on this point: "He that would excuse himself upon the foot of self-defense must show that before a mortal stroke was given he had declined farther combat and had retreated as far as he could with safety, and also that he killed his adversary through mere necessity and to avoid immediate death or great bodily harm."—Foster, page 277. This is the law; and it is not now necessary for me to go farther than to show you it is founded upon natural and immutable principles of justice. "A, being assaulted by B, returneth the blow, and a fight

ensueth. A before a mortal wound given, declineth any farther conflict, and retreateth as far as he can with safety; and then, in his own defense killeth B; this is excusable self-defense, though A had given several blows, NOT MORTAL, before his retreat. But if the MORTAL STROKE had been FIRST given it would have been manslaughter."—Foster, page 277. He must show that at the moment of the mortal blow, he gave it from necessity, to avoid his own death or great bodily harm. Here is another case: "The prisoner was indicted for the murder of his brother; and the case upon evidence appeared to be, that the prisoner on the night the fact was committed came home drunk. His father ordered him to go to bed, which he refused to do, whereupon a scuffle ensued between the father and son. The deceased, who was then in bed, hearing the disturbance, got up and fell upon the prisoner, threw him down, and beat him upon the ground; and there kept him down, so that he could not escape, nor avoid the blows; and as they were so striving the prisoner gave the deceased a wound, with a penknife, of which he died. This, upon a special verdict, was, at a conference of all the Judges of England, ruled MANSLAUGHTER—*for there did not appear to be any inevitable necessity so as to excuse the killing in this manner.*"—Foster, page 278. In all cases where a blow is given to produce death, unless to avoid death or great bodily harm, it is either murder or manslaughter.

Now, unless there was absolute necessity that Murdaugh, to avoid death or great bodily harm from the blow inflicted by Meeks, gave that deadly blow which killed Meeks, after he had changed the knife from his right to his left hand; and unless you believe that he could not himself escape death but by killing Meeks, you must believe him guilty of manslaughter at least, according to the law. The law discountenances the idea that because a man is a mechanic you are not in an unavoidable scuffle to resort to fisticuffs, on account of any presumed superiority of station; but when your adversary assaults in that way, that you may draw a deadly weapon and kill your opponent; because the law cannot excuse such

unequal odds. What is there in this case to justify Murdaugh? Montgomery, whose breast was sprinkled with the spouting blood of Meeks, though at several feet distance, tells you there was no blow when Meeks was stabbed. If Murdaugh was struck with a stick or cane afterwards, he is not to say that because of that subsequent blow or blows he is justified in having previously inflicted death. As to what transpired when Rothwell was stabbed; you will recollect that Rothwell had three wounds. We are able to account for two of them by direct evidence; for the other we account by circumstantial evidence. Two witnesses who saw the Judge's bowie knife enter him, say the first stab was given in the right hand corner of the bar-room as you face the fireplace. These two are Trabue and General Chambers. They say that when Rothwell was in the north-west corner, Judge Wilkinson rushed up and plunged his murderous knife into his back, towards the left side, at a time too when Rothwell was not offending him, and could not offend him, because his back was turned. A second time Judge Wilkinson stabbed Rothwell in nearly the same place, when Rothwell was in another part of the room. So it is at least certain that two of the wounds inflicted upon Rothwell were inflicted by Judge Wilkinson. Let them say what they will about Meeks having struck Murdaugh, and that at the time anyone else was offending Judge Wilkinson's brother, I say, and I say it here in the presence of His Honor, who will set me right if I am in error, that a man has no right to take a life in defense of his brother because merely he is his brother, though a right might exist if in defense of his child or wife. There is no conclusive testimony that Rothwell was assaulting Dr. Wilkinson when stabbed by Judge Wilkinson; on the contrary, it is proved that Rothwell was endeavoring to rescue Dr. Wilkinson from Holmes. Now, as to the law of self-defense, we find it in page 273, under the head of "justifiable self-defense," etc. When a man comes with evident intent to commit felony, which he must be engaged in at the time.

The other case is when in self-defense an adversary is killed. But there is no law to justify JudgeWilkinson in doing what he did on the plea of saving his brother.

In the slaying of Meeks by Murdaugh I will ask, was there that absolute necessity for the taking of life, because he was struck over the head with a whip, which is recognized by the law? They cannot produce any law of England to show it, and I defy them to show me any Statute of Kentucky that warrants it.

In order to justify you, gentlemen of the jury, in finding the three persons indicted, guilty of the offenses charged, though only one or two committed the act, it must appear that there was an aiding or abetting—a concert of action. What did these three gentlemen come down to the bar-room for, if not to countenance each other, and aid each other in striking terror into those with whom they meditated a conflict? Why did they arm themselves with their knives and enter together, if they did not mean to stand by each other? It was to show that they were united, unanimous, and mutually willing to aid and abet each other in their design.

I did not intend to occupy so much of your time—depending upon a further development of this argument by Mr. Hardin to show how the prosecution will reconcile the events detailed in evidence. You will hear from the gentlemen opposite their view of the case for the defense. You will weigh the facts with the arguments on both sides, and I trust —I know—you will hold the scales of justice impartially. If, in this instance, there has been a violation of that security for life guaranteed by our constitution, execute your duties, gentlemen, as law-abiding citizens. That you will do so conscientiously, fearlessly, and becomingly, I have every confidence; and with this conviction, I confide the case to your hands.

Colonel Robertson: It has fallen to my lot, gentlemen of the jury, to follow the Attorney for the Commonwealth, and to open the defense on the part of the accused. In doing this I take pleasure in according to the gentleman my profound ac-

knowledgments for the just, fair and liberal ground on which he has placed the law that must control, as well the prosecution as the defense in this case, while at the same time I have to express my regret that he has permitted himself to draw deductions from the evidence which I think can not be maintained. I do not know that I shall be able to present this case to you in the aspect which properly belongs to it, nor do I know that my feeble state of health will allow me to proceed far with the argument which I propose to offer. Should I find myself unable to go on with the discussion, I will resume my seat, and leave the case in the hands of the distinguished gentlemen who are associated with me in the defense, and who, under any circumstances, would be able to do far more justice to the accused than would fall within the range of my powers. For three months past I have been prevented by a local disease from engaging in argument at the bar, and this is the first occasion during that time in which I have attempted to engage in forensic strife.

Gentlemen, I feel very sensibly the weight of responsibility which rests upon me, not because there is anything alarming in the case itself, but because the charge is a solemn one, presented in the most solemn form, and which, if true, might produce the most solemn consequences. The case, too, has been made to wear the most aggravated form, not only by an abuse of public feeling, for a time, about the city of Louisville, but by the indiscretion of the public prints, two of which in the city, not only departed from invariable usages upon such occasions, but, unfortunately for the accused, these papers permitted themselves to fall into the grossest errors, operating against the truth of the case and against the accused, and which to this day have not been corrected or in any way atoned for. Other papers at a distance copied from them, and thus has there been a most extensive circulation of facts which never existed, to the great injury of the accused. Under these circumstances, though the public mind has in a great degree corrected itself by the lights which were thrown open before the examining court, yet we deemed

it better to bring the cause to the consideration of twelve men, not only equal in all other respects to a jury to be selected in Louisville, but who should be entirely untainted by prejudice, and would be certain to render a verdict according to law and to evidence. Such a jury, gentlemen, we think we have found in the county of Mercer; such a jury now sits before us, and to you is committed the fate of our clients.

Our clients stand before you, gentlemen, charged with no mean, ignoble crime; they stand before you in the highest and noblest attitude in which man can exhibit himself before his fellow-man; they stand before you, *upon proof*, that they invaded not the rights of others, whilst at the same time, understanding their own rights, they defended *them* against the assaults of their assailants, even unto bloodshed and death, as by law they had a right to do.

Intending to place the defense upon grounds of self-defense, and that self-defense being against the attack of a band of conspirators against the honor and perhaps the lives of the accused; I will, for my own convenience, and for the benefit of the counsel who may reply to me, state the authorities on which I shall mainly rely. They are few, but I think they are strong.

"If two or more come together to do an unlawful act against the King's peace, of which the probable consequence might be bloodshed, as *to beat a man*, to *commit a riot*, or to rob a park: and one of them kills a man; it is murder in them all, because of the unlawful act, the *malitia praecogitala*, or evil intended beforehand." 4th Blackstone, page 201 Chitty's edition.

"But if several attack a person at once with deadly weapons, as may be supposed to have happened in Ford's case, though they wait till he be upon his guard; yet it seems (there being no compact to fight) that he would be justifiable in killing any of the assailants in his own defense; because so unequal an attack resembles more a desire of assassination than of combat." East's pleas of the Crown, vol. 1, page 276.

"For no man is required by law to remain defenseless and suffer another to beat him as long as he pleases without resistance, although it be evident that the other did not aim at his life, but he may lawfully exert so much force as is necessary to compel him to desist." Same book, page 286.

But who is to judge of the degree of force necessary to be applied to make the man who attacks desist? I answer, in the very nature of things, he who is attacked must be the judge, and so the law intended, and so it has been ruled, as may be seen from the following authority:—"Yet still" (says East, speaking upon this very point) "if the party killing, had reasonable grounds for believing that the person slain had a felonious design against him, and under that supposition, kill him; though it should afterwards appear that there was no such design; it will be only manslaughter, or even misadvenure, according to the degree of caution used, and the probable ground of such belief." Same book, page 173.

"For" (says the same author, speaking of unlawful combinations) "if the act or design be unlawful or premeditated, and death happen from anything done in the prosecution of it, it is clearly murder in *all* who took part in the same transaction." Same book, page 259.

"He who voluntarily, knowingly and unlawfully, intends hurt to the person of another (as Redding and his party intended to the accused), though he intended not death, yet if death ensue, is guilty of murder, or manslaughter, according to circumstances. As if A. intending to beat B., happen to kill him, if done from preconceived malice, or in cool blood upon revenge, it will be no alleviation that he did not intend all the mischief that followed." Same book, page 266.

The learned author, in continuation of his illustrations, by rules laid down, says,

"The above rules govern all cases where divers persons resolve generally to resist all opposers in the commission of any breach of the peace, and to execute it with violence, or in such a manner as naturally tends to raise tumults and

affrays: as by a violent disseisin, with great numbers, or *to beat a man,* or rob a park, or standing in opposition to the sheriff's posse: for they must at their peril abide the merit of their actions who willfully engage in such bold disturbances of the public peace. In such cases the law adopts the presumption of fact that they came with intent to oppose all who should hinder them in their design." Same book, page 257.

As Judge Wilkinson's case differs somewhat from the others, and as some authorities may be applicable to his case, which may not apply to the others, I will at this time introduce the following general principle, immediately following the last quotation, and in the same book.

"And in all such instances, whether the breach of the peace were sudden or premeditated, not only officers, but even private persons may interfere to suppress the riot, giving notice of such their intention; and much more may they defend themselves: and if in so doing they kill any of the rioters, if they could not otherwise accomplish their purpose, *it will be justifiable;* and the killing any person so interfering by any of the rioters would be murder in all who took part in the fact or abetted thereto." Same book, page 257.

As Judge Wilkinson's case will turn somewhat upon the right of third persons to interfere and prevent a felony, such, for instance, as the killing of another, I will continue my authority, that I may be saved trouble hereafter. Lord Hale, in speaking upon this right of third persons to interfere, for the purpose of preventing a felony, puts this case, viz:

"If A. B. and C. be walking in company together, and C. assault B., who flies, and is in danger of being killed from C's pursuit, unless present help be afforded; and A. thereupon kill C., in defense of the life of B.; it seems that in this case of such inevitable danger of the life of B., the killing of C. by A. is in the nature of self-defense, but it must plainly appear by the circumstances of the case as the manner of assault, the weapons with which it was made, etc.,

that B.'s life was in imminent danger." Lord Hale, page 484.

I will continue my authorities—Blackstone, speaking of crimes committed by violence, says, "For the one uniform principle that runs through our own, and all other laws, seems to be this, that where a crime, in itself capital, is endeavored to be committed by force, it is lawful to repel that force, by the death of the party attempting." 4th Blackstone, Chitty's edition, page 134.

"Homicide in self-defense, or, *se defendendo,* upon a sudden affray, is also excusable, rather than justifiable, by the English law. This species of self-defense, must be distinguished from that just now mentioned, as calculated to hinder the perpetration of a capital crime, which is not only a matter of excuse, but of justification. But the self-defense of which we are now speaking, is that whereby a man may protect himself from an assault or the like, in the course of a sudden broil, or quarrel, by killing him who assaults him; and this is what the law expresses by the word *chance-medley,* or (as some rather choose to write it) *chaud-medley,* the former of which in its etymology signifies a *casual* affray, the latter an affray in the *heat* of blood or passion; *both of them pretty much the same import.*" *Blackstone,* page 135, Chitty's edition.

"'Homicide, or the killing of any human creature, is of three kinds, *justifiable, excusable* and *felonious.* The first has no share of guilt at all; the second, very little: but the third is the highest crime against the law of nature, that man is capable of committing." 4th vol. Blackstone, page 178, Chitty's edition.

Murder is described or defined by Sir Edward Coke to be "when a person of sound memory and discretion, unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied." 4th Blackstone, page 195, Chitty's edition.

The statute of Kentucky which prescribes the punishment of persons convicted of manslaughter, contains this proviso:

"*Provided always,* That nothing in this act contained, shall extend to any person who shall kill another in *self-defense,* nor extend to any other who shall kill another by chance, in keeping or preserving the peace, so as the said manslaughter, be not committed willingly, and under color of keeping the peace." Morehead & Brown's Digest, page 1294.

Gentlemen of the jury, I believe you now have all the authorities to which I shall have occasion to advert in the course of the remarks I shall address to you, and I have given them to you drawn together in one view, under the hope that you will bear them in mind, and know how to apply them to every branch of the case, as such branch may be presented in the argument.

Let us now see what is the testimony before you; and by a short process of analysis, you will be enabled to make such an application of the law to the testimony as cannot fail to conduct you to just and rational conclusions. I repeat, gentlemen, that I do not propose to go into any strict and rigid examination of the testimony, the labor will be more than my feeble condition will bear; I shall take little more than a passing view of its general character, for I verily believe that you already understand the whole case, as well as you will be able to do, after discussion; at least so far as *my* argument will go.

I do not intend to trouble you with any argument upon the scenes which have been described as having happened at Redding's own house, in the afternoon of the day on which this tragedy was played at the Galt House, because they are separate and distinct matters; occurring at different times, at different places, and with different men. Rothwell and Meeks, for the killing of whom the accused are now arraigned before you, were neither of them at Redding's when the difficulty about the coat took place, and what occurred there cannot have any legal connection with the Galt House. We might, indeed, have prevented the evidence relating to what happened at Redding's from going to your consideration, and with that view might have submitted a successful motion to

the Court; but we had other objects in view, we wished nothing to be concealed which might affect the characters of our clients, and we wished, moreover, to show the malice which animated and moved the lawless band of conspirators with which the accused afterwards had to contend. So far as it may be necessary to show this violent and malicious feeling on the part of Redding and his company, I may probably have occasion to refer to portions of the testimony showing the things which happened at Redding's house, because the danger which surrounded the accused at the Galt House, can only be known by first showing in what state of feeling this lawless band entered the house in which the tragical scenes were afterwards exhibited.

Gentlemen of the Jury, whether you shall view this case as an individual conflict between the slayers and the slain; whether you view it as an affray of the moment, without previous concert, or whether you view it as a previously and deliberately formed conspiracy, maliciously entered into by Redding and his party, for the unlawful purpose of beating and disgracing the accused; they (the accused) stand equally justified or excused; view it as you may, place it in every varied aspect, and it is still a case of self-defense; strictly so, by the most rigid construction of law.

This right of self-defense is not a right derived from municipal law, it is not a thing that has been taught us, we have not learned it from books; it is a principle of our nature, born with us, and has grown with us, in feeling and in strength. It is the most important right which belongs to man by the law of nature; it is his birthright, of which human power can not deprive him, and which man when he entered into the social compact, reserved to himself and to posterity —municipal law is a *consequence,* and not a *cause,* of the social compact. Before man entered into a state of society, each one judged of the wrongs which he supposed he had sustained, and he took redress in that mode and manner which inclination and strength enabled him to do; this state of things could not long endure, for the strong would soon gain

possession of all that belonged to the weak; and thus all the principles of right and justice were broken down and destroyed. To remedy this, a plan was conceived by individuals of forming what is called the social compact. This social compact was an agreement amongst all that the general affairs of mankind should be regulated by law-makers, chosen or appointed in such mode as might be from time to time prescribed by supreme authority. The great object in view, at the time of agreeing to this social compact, was to secure individuals in the exercise of certain great and inalienable rights which belong to man as his *birth-right,* and of which posterity could not be deprived. Amongst these inalienable rights will be found the right of every person to defend his *person,* his *property,* and his *habitation.* Hence we find that municipal law, in all civilized countries, is constantly throwing new guards around these rights. You will be told, no doubt, by the learned counsel for the prosecution, that when an individual is unlawfully assaulted, he must only apply as much force *in resistance,* as will prevent the contemplated injury. This authority I shall not deny, but insist that, in this resistance, the party assaulted is the only judge of the *degree* to which it shall be carried, and if he has good reason to believe that nothing but killing his assailant will save him from being wounded, maimed or killed, then he is authorized to slay his assailant, and in this position I think I am well sustained by some of the authorities already read to you. You will be told that it was the duty of the accused to retreat to the *wall,* as the books call it, before a mortal blow could be given. Gentlemen of the jury, all this is true as a general proposition, but it has its limitations and exceptions. If a man is already against a wall he can retreat no further; this is one exception. If he is in his own house and is assaulted with a felonious design, he need not retreat; this is another exception; and if he is so fiercely attacked that the delay in retreating would place him in imminent danger, then he need not retreat; and this is another exception. Whilst, therefore, the general rule may

be very good, it is liable to at least these three exceptions.

(The *Counsel* reviewed the evidence at length and proceeded:)

I have known these gentlemen and their fathers before them, almost from their infancy. I knew them in our mother state, Virginia. They grew up into manhood without a blemish upon their characters; they carried with them to their adopted state (Mississippi) the fairest and best reputations, and they have maintained their standing there without a blemish as you are told by the testimony. A regard for peace, a profound respect for the laws, a determination to conduct themselves towards all as good members of society should do, seem to be traits of character strongly stamped upon their whole course of life as the best members of society could desire. To believe, therefore, with all this evidence of good character and moral integrity before us, that they would wantonly have attacked a set of *strangers* whom they never had seen before, would be to reverse the qualities of all human nature, and knowing them as well as I do, I would not believe it though witnesses from Heaven should come and testify to the facts. But the facts proven even by mortals do not show them guilty of anything but a determination to defend themselves. Judge Wilkinson had come to Kentucky at the time for the purpose of executing and consummating the most important and holy contract which man can enter into. On the Tuesday of this bloody tragedy he was to take to his bosom as his wife, one of the most lovely girls of Kentucky, and all the considerations which spring from such a prospect naturally prompted him to avoid all personal dangers.

His natural disposition and his delicate situation at the time, united in keeping him thoughtful of his own safety; and it would be one of the most violent of all presumptions to suppose that at such a time and under such circumstances, he would be found violating the law, and hazarding his own existence. No, gentlemen, such an opinion can not for a moment be entertained. Necessity alone prompted him to

action, and however tragical may have been the consequences, *that necessity* is the only thing which he deplores. A necessity forced upon him by a band of violent, athletic and lawless men, who sought him in his own house, to degrade and disgrace him by public chastisement. There is no part of the United States where a man would be punished for such conduct, and least of all, is it to be expected at the hands of a *Kentucky* jury, composed of men whose fathers fought themselves into their homes, and were distinguished by a spirit of chivalry which enabled them to subdue every foe, and surmount every danger. With you, the descendants of such gallant sires, may safely be entrusted this and every other cause which involves the sacred principles of honor.

Before I take my seat, I beg leave to say one word to the distinguished gentleman who has been employed to aid in this prosecution. I regret, most sincerely regret, to see the practice of hired counsel in criminal cases gaining ground in this Commonwealth. Under its influence the heart becomes corroded and steeled against all the sympathies of our nature. The learned gentleman who is aiding in this prosecution, is to receive one thousand dollars for his services, and from the very nature of his bargain, as it has been proven, he must have undertaken to convict, if he can, whether the accused be innocent or guilty. Three times have we met him, first at the examining Court, next at the Circuit Court of Jefferson, and now before this Court. Here the generous and gallant Hector takes his last, his final stand, and his fate is victory or death. Three times has he been pursued around the walls of Troy, and as he can not now speak for himself, I will speak for him and will use his own words:

> "Too long, oh, son of Peleus, Troy has viewed
> Her walls thrice circled, and her chief pursued.
> But now, some god within me bids me try
> Thine or my fate, I kill thee, or I die.
> Come, then, the glorious conflict let us try,
> Let the steel sparkle, and the javelin fly."

But the gentleman will probably say that the beautiful quotation which I have made from the still more beautiful

Iliad, is neither an apt nor an appropriate illustrations, since in the combat between Hector and Achilles, Hector was vanquished and slain. In answer to which I say, that, in those ancient days the gods were supposed to hold in *their* hands the fate of men and of nations, and that they invariably decided according to the principles of right and justice. In more modern times, gentlemen of the jury, you have been substituted for the gods; you hold in your hands the fate of my gallant and much injured friends, and, not less just than the gods, you, too, will decide according to right and justice. Do this, as I know you will, and we shall be content.

The distinguished gentleman who aids in this prosecution, has furnished us with some proof of the corroding influence upon the human heart, caused by a long indulgence in prosecution for alleged crimes. I am sure that nature gave him a kind and generous disposition, and that he is still possessed of these amiable qualities. I do not doubt but he has so long lent his aid in prosecutions of this kind that he has brought himself "to look on blood and carnage with composure." He will doubtless make, as he has heretofore made, a bold and mighty effort to convict the accused, though in my judgment such conviction would be against both the law and the evidence. Neither the shrieks nor the tears of the lovely Andromache, nor the groans and lamentations of the aged Priam, can stay him in his fierce pursuit; the wife and the father sink into nothingness when compared with the glittering fee that awaits his efforts; he has bargained for conviction, and he goes for his bond. Give it to him, gentlemen. Tell him to take his pound of flesh, but tell him at the same time, that if in cutting it he spills one drop of blood, Shylock himself shall be the only victim of the law. You have now heard this bloody history, gentlemen, in the best form permitted by my feeble health; and whether you take it into consideration upon the exclusive testimony of the Commonwealth, or whether you view the testimony on both sides, your minds must arrive at the same conclusion. In either case I know that your verdict will be, *not guilty.*

Gentlemen of the jury, in conclusion, I will say that if it were necessary, I would invoke the lovely beauty by which we are surrounded to aid me in a cause so just and holy. I would ask them to indicate to you their feelings in favor (as I know they are), of my persecuted and much injured friends; for, after all, we exercise our energies, and are stimulated to generous and noble deeds for the sake of woman, and when she commands *we* are bound to obey; take woman from the world and the dark planet is left without a sun.

Gentlemen, I have done. So far as I am concerned the case is with you, and if law, justice and evidence can favor us in the cause, we dread not your verdict, for we have all on our side.

Hon. S. S. Prentiss. I rise to address you with mingled feelings of regret and pleasure. I regret the occasion, which has caused me thus accidentally and unexpectedly to appear before you, and has compelled you to abandon, for the time, the peaceful and quiet vocations of private life for the purpose of performing the most important and solemn duty which, in the relations of civilized society, devolves upon the citizen.

I regret to behold a valued and cherished friend passing through one of the most terrible ordeals ever invented to try human feelings or test the human character; an ordeal through which, I do not doubt, he will pass triumphantly and honorably, without leaving one blot or stain upon the fair fame that has been so long his rightful portion, but through which he can not pass unscathed in his sensibilities and feelings. The lightning scar will remain upon his heart, and public justice herself can not, even though by acclamation through your mouths she proclaims his innocence, ever heal the wounds inflicted by this fierce and unrelenting prosecution, urged on, as it has been, by the demons of revenge and avarice. Most of all do I regret the public excitement which has prevailed in relation to these defendants, the uncharitable pre-judgment which has forestalled the action of

law, the inhospitable prejudice aroused against them because they are strangers, and the attempt which has been, and is still making, to mingle with the pure stream of justice, the foul, bitter, and turbid torrent of private vengeance. But I am also gratified; gratified that the persecution under which my friends have labored, is about to cease; that their characters as well as the cause of public justice will soon be vindicated; that the murky cloud which has enveloped them will be dissipated, and the voice of slander and prejudice sink into silence before the clear, stern, truthful response of this solemn tribunal.

The defendants are particularly fortunate in being tried before such a tribunal. The bearing and character of His Honor who presides with so much dignity, give ample assurance that the law will be correctly and impartially laid down; and, I trust I may be permitted to remark that I have never seen a jury in whose hands I would sooner entrust the cause of my clients, while, at the same time, I am satisfied you will do full justice to the Commonwealth.

I came before you an utter stranger, and yet I feel not as a stranger toward you. I have watched during the course of the examination the various emotions which the evidence was so well calculated to arouse in your bosoms, both as men and as Kentuckians; and when I beheld the flush of honorable shame upon your cheeks, the sparkle of indignation in your eye, or the curl of scorn upon your lips as the foul conspiracy was developed, I felt that years could not make us better acquainted. I saw upon your faces the mystic sign which constitutes the bond of union among honest and honorable men, and I knew that I was about to address those whose feelings would respond to my own. I rejoiced that my clients were, in the fullest sense of the term, to be tried by a *jury of their peers.*

Gentlemen of the jury, this is a case of no ordinary character and possesses no ordinary interest. Three of the most respectable citizens of the State of Mississippi stand before you indicted for the crime of murder, the highest offense

known to the law of the land. The crime is charged to have been committed not in your own county, but in the city of Louisville, and there the indictment was found. The defendants during the past winter, applied to the Legislature for a change of venue and elected your county as the place at which they would prefer to have the question of their innocence or guilt investigated.

This course, at first blush, may be calculated to raise in your minds some unfavorable impressions. You may naturally inquire why it was taken; why they did not await their trial in the county in which the offense was charged to have been committed; in fine, why they came here? I feel it my duty before entering into the merits of this case, to answer these questions and to obviate such impressions as I have alluded to, which, without explanation, might very naturally exist.

In doing so it will be necessary to advert briefly to the history of the case.

My clients have come before you for justice. They have fled to you even as to the horns of the altar, for protection. It is not unknown to you that upon the occurrence of the events, the character of which you are about to try, great tumult and excitement prevailed in the city of Louisville. Passion and prejudice poured poison into the public ear. Popular feeling was aroused into madness. It was with the utmost difficulty that the strong arm of the constituted authorities wrenched the victims from the hands of an infuriated mob. Even the thick walls of the prison hardly afforded protection to the accused. Crouched and shivering upon the cold floor of their gloomy dungeon, they listened to the footsteps of the gathering crowds, and ever and anon, the winter wind that played melancholy music through the rusty gates was drowned by the fierce howling of the human wolves who prowled and bayed around their place of refuge greedy and thirsting for blood. Every breeze that swept over the city bore away slander and falsehood upon its wings. Even the public press, though I doubt not unwit-

tingly, joined in the work of injustice. The misrepresentations of the prosecutor and his friends became the public history of the transaction, and from one end of the Union to the other these defendants were held up to public gaze and public execration as foul, unmanly murderers, and that, too, before any judicial investigation whatever had occurred, or any opportunity been afforded them for saying a single word in their defense.

I recollect well when I received the first information of the affair. It was in some respectable newspaper, which professed to give a full account of the transaction, and set forth with horrible minuteness a column of disgusting particulars. Instantly, openly and unhesitatingly, I pronounced the paragraph false, and tramped it under my heels. When rumor seemed to endorse and sustain the assertions of public prints, I laughed her to scorn. I had known Judge Wilkinson long and well. I knew him to be incapable of the acts attributed to him, or of the crime with which he was charged. Not an instant did I falter or waver in my belief. I hurled back the charge as readily as if it had been made against myself. What! A man whom I had known for years as the very soul of honor and integrity, to be guilty, suddenly and without provocation, of a base and cowardly assassination! One whose whole course of life had been governed and shaped by the highest moral principle; whose feelings were familiar to me; whose breast ever had a window in it for my inspection, and yet had never exhibited a cowardly thought or a dishonorable sentiment; that such a one, and at such an era in his life, too, should have leaped at a single bound the wide gulf which separates vice from virtue, and have plunged at once into the depths of crime and infamy! Why, it was too monstrous for credence. It was too gross for credulity itself. Had I believed it, I should have lost all confidence in my kind. I would no longer have trusted myself in society where so slender a barrier divided good from evil. I should have become a man-hater, and, Timon-like, gone forth into the desert, that I might rail with freedom against my race.

You may judge of my gratification in finding the real state of facts in the case responsive to my own opinion.

I am told, gentlemen, that during this popular excitement there were some whose standing and character might have authorized the expectation of a different course of conduct, who seemed to think it not amiss to exert their talents and influence in aggravating instead of assuaging the violent passions of the multitude. I am told that when the examination took place before the magistrates every bad passion, every ungenerous prejudice, was appealed to. The argument was addressed, not to the Court, but to the populace.

It was said that the unfortunate individuals who fell in the affray were *mechanics,* while the defendants were *Mississippians—aristocratic slave holders*—who looked upon a poor man as no better than a negro. They were called *gentlemen* in derision and contempt. Every instance of violence which has occurred in Mississippi for years past was brought up and arrayed with malignant pleasure, and these defendants made answerable for all the crimes which, however much to be regretted, are so common in a new and rapidly populating country. It was this course of conduct and this state of feeling which induced the change of venue. I have made these remarks because I fear that a similar spirit still actuates that portion of this prosecution which is conducted, not by the State, but by private individuals.

I am not aware that the Commonwealth of Kentucky is incapable of vindicating her violated laws, or unwilling to prosecute the perpetrators of crime. The District Attorney has given ample proof that she is provided with officers fully capable of asserting her rights and protecting her citizens, and with the exception of one or two remarks, which fell from him inadvertently, I accord to his observations my most unqualified approbation. He has done equal justice to the State and the defendants; he has acquitted himself ably, honorably, and impartially. But, gentlemen, though the State is satisfied the Prosecutor is not. Your laws have spoken through their constituted agent; now private venge-

ance and vindictive malice will claim to be heard. One of the ablest lawyers of your country, or of any country, has been employed to conduct the *private part* of this prosecution; employed, not by the Commonwealth, but by the real murderer; him whose forehead I intend, before I am done, to brand with the mark of Cain—that in after life all may know and all may shun him. The money of the Prosecutor has purchased the talent of the advocate, and the contract is, that *blood* shall be exchanged for *gold*. The learned and distinguished gentleman to whom I allude, and who sits before me, may well excite the apprehension of the most innocent. If rumor speak truth he has character sufficient, even though without ability, and ability sufficient, even without character, to crush the victims of his purchased wrath.

I said that with the exception of one or two remarks, I was pleased with the manly and honorable course of the Commonwealth's Attorney. These remarks seemed to be more in the spirit of his colleague than in accordance with his own feelings.

I was sorry to hear him mention so pointedly, and dwell so long upon the fact that the defendants were *Mississippians*, as if that constituted an ingredient in their crime or furnished a proof of their guilt. If to be a Mississippian is an offense in my clients, I can not defend them; I am myself *particeps criminis*. We are all guilty. With malice aforethought, we have left our own bright and beautiful homes, and sought that land, the name of which seems to arouse in the minds of the opposing counsel only images of horror. Truly the learned gentlemen are mistaken in us; we are no cannibals nor savages. I would that they would visit us and diasbuse their minds of these unkind prejudices. They would find in that far country thousands of their own Kentuckians who have cast their lot by the monarch stream, in the enjoyment of whose rich gifts, though they forget not, they hardly regret the bright river upon whose banks they strayed in childhood. No State has contributed more of her sons to Mississippi than Kentucky, nor do they suffer by

being transplanted to that genial soil. Their native State may well be proud of them as they ever are of her.

But I do injustice to you and to myself by dwelling upon this matter. Here in the heart of Kentucky my clients have sought and obtained an unprejudiced, impartial jury. You hold in your hands the balance of justice; and I ask and expect that you will not permit the prosecution to cast extraneous and improper weights into the scale against the lives of the defendants. You constitute the mirror, whose office it is to reflect, in your verdict, the law and the evidence which have been submitted to you. Let no foul breath dim its pure surface and cause it to render back a broken and distorted image. Through you now flows the stream of public justice; let it not become turbid by the trampling of unholy feet. Let not the learned counsel who conducts the private part of this prosecution act the necromancer with you, as he did with the populace in the city of Louisville, when he raised a tempest which his own wizard hand could not have controlled. Well may he exclaim in reference to that act, like the foul spirit in Manfred:

"I am the rider of the wind,
The stirrer of the storm;
The hurricane I left behind
Is yet with lightning warm."

Aye, so it is still "with lightning warm." But you, gentlemen, will perform the humane office of a conductor, and convey this electric fluid safely to the earth.

You will excuse these prefatory observations; they are instigated by no doubt of you, but by a sense of duty to the defendants. I wish to obviate in advance, the attempts which I know will be made to excite against them improper and ungenerous prejudices. You have seen in the examination of one of the witnesses, Mr. Graham, this very day, a specimen of the kind of feeling which has existed elsewhere, and which I so earnestly deprecate. So enraged was he because the defendants had obtained an impartial jury, that he wished the whole Legislature in that place not to be men-

tioned to ears polite, and that he might be the fireman; and all on account of the law changing the venue. Now, though I doubt much whether this worthy gentleman will be gratified in his benevolent wishes in relation to the final destiny of the Senate and House of Representatives of this good Commonwealth, yet I can not but believe that his desires in regard to himself will be accomplished, and his ambitious aspirations fully realized in the ultimate enjoyment of that singular office which he so warmly covets.

Gentlemen of the jury—I ask for these defendants no sympathy, nor do they wish it. I ask for them only justice—such justice alone as you would demand if you occupied their situation and they yours. They scorn to solicit that from your pity which they challenge from your sense of right. I should ill perform toward them the double duty which I have assumed, both of friend and advocate, did I treat their participation in this unfortunate transaction otherwise than candidly and frankly; did I attempt to avoid responsibility by exciting commiseration. I know that sooner than permit deception and concealment in relation to their conduct, they would bare their necks to the loathsome fingers of the hangman, for to them the infamous cord has less of terror than falsehood and self-degradation.

That these defendants took away the lives of the two individuals whose deaths are charged in the indictment, they do not deny. But they assert that they did not so voluntarily or maliciously; that they committed the act from stern and imperative necessity; from the promptings of the common instincts of nature; by virtue of the broad and universal law of self-defense; and they deny that they have violated thereby the ordinances of either God or man. They admit the act, and justify it.

The ground of their defense is simple, and I will state it so that it can not be misapprehended. They assert, and I shall attempt from the evidence submitted to convince you that a conspiracy was formed by Mr. Redding, the prosecutor, and various other persons, among whom were the de-

ceased, to inflict personal violence upon them; that the conspirators, by preconcerted agreement, assembled at the Galt House, in the city of Louisville, and attempted to accomplish their object; and that, in the necessary, proper, and legal defense of their lives and persons from such attempt, the defendants caused the deaths of two of the conspirators. After discussing this proposition, I shall submit another, which is, that even though a conspiracy on the part of the deceased and their companions to inflict personal violence and bodily injury upon the defendants, did not exist, yet the defendants had *reasonable* ground to suppose the existence of such a conspiracy, and to apprehend great bodily harm therefrom; and that upon such reasonable apprehension they were justified in their action, upon the principle of self-defense, equally as if such conspiracy had in point of fact existed.

The law applicable to these two propositions is simple, being, in fact, nothing more than a transcript from the law of nature. The principles governing and regulating the right of self-defense are substantially the same in the jurisprudence of all countries—at least all civilized ones. These principles have been read to you from the books by my learned and excellent friend Col. Robertson, and require no repetition.

That a man has a right to defend himself from great bodily harm, and to resist a conspiracy to inflict upon him personal violence if there is reasonable danger, even to the death of the assailant, will not, I presume, be disputed. That *reasonable, well-grounded* apprehension, arising from the actions of others of immediate violence and injury, is a good and legal excuse for defensive action, proportionate to the apparent impending violence and sufficient to prevent it, I take to be equally indisputable. By these plain rules and upon these simple principles, let us proceed to test the guilt or innocence of the defendants.

First, then, as to the existence of the conspiracy. Before examining the direct evidence to this point, you will natu-

rally inquire, was there any cause for this alleged conspiracy? Motive always precedes action. Was there any motive for it? If we establish the existence of the seed, we shall feel less hesitation in being convinced of the production of the plant. Was there, then, any motive on the part of Mr. Redding and his friends for forming a combination to inflict personal violence upon the defendants? In answering this question it will be necessary to take notice of the evidence which has been given in relation to events that transpired at the shop of Mr. Redding at a period anterior to the transaction at the Galt House, and which, except for the clue they afford to the motive, and consequently to the subsequent action of the parties, would have no bearing upon the case before you. You will take heed to remember that whatever of impropriety you may consider as attaching to the conduct of Judge Wilkinson and his friends during this part of the affair, must not be permitted to weigh in your verdict, inasmuch as that conduct is the subject of another indictment which is still pending in this court.

Judge Wilkinson visited Louisville for the purpose of making the preparations necessary for the celebration of his nuptials. The other two defendants had also their preparations to make, inasmuch as they were to act as his friends upon this interesting occasion. Dr. Wilkinson, a brother of the Judge, had ordered a suit of clothes of Mr. Redding, who follows the very respectable occupation of tailor, occasionally relieved and interspersed by the more agreeable pursuits of a coffee-house keeper. On the day but one preceding that fixed for the marriage ceremonies, the Doctor, in company with his brother and friend, Murdaugh, proceeded to the shop of Mr. Redding for the purpose of obtaining the wedding garments. Upon trying on the coat it was found ill-made and of a most ungraceful fit. It hung loosely about his shoulders, and excited by its awkward construction the criticism and animadversion of his friends. Even the artificer did not presume to defend the work of his own hands, but simply contended that he could re-organize the garment

and compel it, by his amending skill, into fair and just proportions. From the evidence I presume no one will doubt that it was a shocking bad coat. Now, though under ordinary circumstances, the aptitude of a garment is not a matter of very vital importance in the economy of life, and ought not to become the subject of controversy, yet all will admit that there are occasions upon which a gentleman may pardonably indulge a somewhat fastidious taste in relation to this matter. Doctor Wilkinson will certainly be excused, considering the attitude in which he stood for desiring a well made and fashionable coat.

I confess I am not a very good judge in concerns of this sort. I have had no experience on the subject, and my investigations in relation to it have been exceedingly limited. Under favor, however, and with due deference to the better judgment of the learned counsel on the other side, I give it as my decided opinion that a gentleman who is about to participate in a marriage ceremony is justified in refusing to wear a coat, which, by its loose construction and superabundant material, indicates, as in the case before us, a manifest want of good husbandry.

Suffice it to say, Doctor Wilkinson and his friends did object to the garment, and Mr. Redding, after some altercation, consented to retain it. The pantaloons, which constituted a part of the suit, had been sent to the hotel, and the Doctor was in the act of paying for them, out of a $100 bill, which he had previously deposited with Redding, when the Judge remarked that he had better not pay for the pantaloons until he had first tried them on, as they might be found to fit no better than the coat. Mr. Redding, according to his own evidence, responded, that "they had said too much already about the matter," to which the Judge, he says, replied, that he did not come there to be insulted, and immediately seized the poker and struck him; upon which the Doctor and Mr. Murdaugh also fell on him, with their knives drawn. Redding then seized his shears, but did not succeed in cabbaging therewith any part of his assailants. He was successful,

however, in dragging the Judge into the street, where, after a slight scuffle, which resulted in no personal injury to any of the parties, they were separated. After the separation, Redding offered, if they would lay down their knives, to fight them all. This kind proposition the defendants declined; but the Doctor returned into the shop, obtained his $100 note, and then the defendants retired from the place.

Such in substance is Mr. Redding's own account of the transaction at his shop. The witness Weaver also proves the altercation which occurred in relation to the fit of the coat and the scuffle which ensued in consequence. He, however, avers that Redding, in a very insulting manner, told the Judge that he "was more meddlesome than the other," and that he "was too d—d meddlesome," or words to that effect; which insulting language so excited the Judge that he seized the poker and commenced the assault.

The other witness, Craig, Redding's journeyman, testifies in substance the same as Redding, as to what passed in the shop; corroborates his account of the altercation about the coat; and says he considered Doctor Wilkinson, not as assisting in the affray, but as attempting to separate the parties. Some of the witnesses think that the Doctor attempted, in the street, to stab Redding, as he was getting the advantage of his brother. The evidence on this point, as well as in regard to the conduct of Murdaugh, is somewhat contradictory. In the view, however, which I have taken of the case, the discrepancy is of little importance.

It is clearly proven, take the evidence in any way, that Mr. Redding used insulting language towards Judge Wilkinson, on account of the Judge's expression of an opinion in relation to the fit of his brother's coat. What was the exact language used, it is difficult to ascertain.

There were six persons in the room when the quarrel ensued—on the one side, the prosecutor (Redding), his foreman (Craig), and the boy (Weaver); on the other, the three defendants.

All the evidence on this point has been derived from the

first party, and ought, consequently, to be taken with many grains of allowance. The prosecutor has given you his version of the affair, but his cunning has prevented the defendants from giving you theirs. Doctor Wilkinson, who was discharged by the examining magistrate, has been included in the indictment, one would judge, for the very purpose of precluding his testimony. No one can doubt that the conduct of Judge Wilkinson, however reprehensible, resulted from the abusive language and insulting demeanor of Mr. Redding. The happy facility with which he indulged, on a subsequent occasion, in the use of opprobrious epithets, gives good reason to suppose that his remarks on the present were not very guarded. The expression deposed to by Weaver is, I presume, but a sample. "You are too d—d meddlesome," was the observation, accompanied, no doubt, by the overbearing and bullying manner which illustrated his conduct afterwards, and which smacked more of his spiritual pursuit, as the Ganymede of a coffee-house, than of his gentle calling as a knight of the shears and thimble. He certainly did, on this occasion, "sink the tailor"; for tailors are proverbially polite and gentlemanly in their deportment.

I do not wish to be considered as justifying Judge Wilkinson or his friends in taking notice of the petulant and insolent conduct of Redding. I think they would have better consulted their character and feelings by treating him with contempt. I will go further, and candidly admit that I consider their course reprehensible; that it resulted from passion and sudden excitement, and not from deliberate determination. They were themselves convinced of this in a moment, and left the ground, ashamed, as they still are, of their participation in the matter—Judge Wilkinson rebuking and leading away his young and more ardent friend, Murdaugh, who seemed to indicate some disposition to accept the boastful challenge of Mr. Redding, that "he could, if they would lay down their knives, whip them all three." From all the evidence it is perfectly clear that, in the altercation, no personal injury resulted to any of the parties; that the

defendants retired voluntarily from the quarrel, while Mr. Redding retained the field, and with boastful taunts and insulting outcries, invited a renewal of the fight. The Mississippians were manifestly satisfied. Not so Mr. Redding; he was "full of wrath and cabbage," boiling over with violence, and breathing defiance and vengeance against the retreating foe. He, doubtless, retired to his coffee-house and attempted to soothe his wounded feelings with some of the delightful beverages which it was occasionally his profitable province to dispense to others. Here his friends gathered around him; he recounted to them his manifold grievances; he grew warm in the recital; the two white-handled pocket-knives which had been drawn but not used in the affray, danced before his distempered imagination in the shape of trenchant and death-dealing blades. These little instruments of ordinary and general use, became, at once, bowie-knives, "in buckram." He believed, no doubt, and made his friends believe, that he was an injured man, and that some satisfaction was due to his insulted honor. I have presented this part of the case to you simply for the purpose of enabling you to judge of the subsequent action of the parties, and to indicate on which side a desire for vengeance, and a combination to obtain it were most likely to originate. Upon the conclusion of the first affray which party would you have suspected of a disposition to renew it? Where could lie the motive on the part of Judge Wilkinson and his friends for additional violence? But who that is acquainted with the workings of human nature, or the indications of human feeling, will hesitate a moment in believing that revenge lurked in the bosom of Redding, and sought only a safe opportunity for development? His conduct indicated a state of mind precisely fitted for the formation of a conspiracy.

Having laid the foundation, I will now proceed to the erection of the superstructure. I will show, first by the direct and then by the circumstantial proofs, the existence of this foul and cowardly conspiracy. I will, however, here remark, that I doubt not the misrepresentations and falsehoods of Mr.

Redding, in relation to the transaction, induced several of the persons implicated to join the combination, who, with a correct knowledge of the facts, would never have participated in the affair.

First, then, as to the direct and positive evidence. Mr. Jackson says, that immediately after the first affray he was passing Mr. Redding's, when his attention was attracted by loud talking in the store, which induced him to enter, where he found Redding, Johnson and Meeks. Johnson was expressing his opinion as to the course which should be pursued towards the Mississippians for their conduct, and said they "ought to go to the Galt House and flog them." "Jack," said he to Mr. Redding, "just say the word, and I'll go for Bill Holmes, and we'll give them hell;" at the same time boasting, in his own peculiar phraseolgy, "that he was as much manhood as was ever wrapped up in so much hide." Upon some hesitation being evinced at this proposition, Meeks said, "Let's go anyhow, and we'll have a spree."

Mr. Jackson further deposes, that some time after he was stopped by Johnson, on the street, who told him he was going after Holmes; that Jack Redding was a good man, and that he, Jackson, ought to go with them to the Galt House and see him righted. Jackson declined, alleging as an excuse his religious character, and his desire to abstain from fighting; whereupon Johnson exclaimed, in his ardent zeal for enlisting recruits, that "church, hell or heaven ought to be laid aside to right a friend." Jackson says he understood it distinctly, that it was a fight to which he was invited.

Mr. Jackson's testimony is entitled to credit. He did not participate in the affair; and he can have no inducement to speak falsely, for all his prejudices must naturally be enlisted on the side of the prosecution. His character is sustained by unexceptionable testimony, and has been impugned by no one except the Salamander gentleman, whose ambition seems to be, to pursue in the next world that occupation which in this is principally monopolized by the descendants of Ham.

The next direct evidence of the conspiracy is from Mr.

Deering, whose character and testimony are both unimpeachable. He says he was passing down Market street, on the evening of the affray, when he saw, near the market-house, Johnson, in company with Holmes and others, and that they were discussing the subject of the quarrel between the Mississippians and Redding. This proves that Johnson was carrying into effect his proposition at Redding's store, viz.: "to go and get Bill Holmes and give them hell." He had already found Bill Holmes, and, we shall presently see, made all his arrangements for "giving them hell."

Mr. Deering says that soon after he met Mr. Johnson again, who inquired for Mr. Turner, the City Marshal. Mr. Deering told him he would be too late with his officers, for the Mississippians would be gone; to which Mr. Johnson responded, "*there were enough gone there—that if they came down, their hides would not hold shucks.*" What did this mean, if it did not indicate that the conspiracy had already been formed, and a portion of the conspirators assembled at the Galt House, for the purpose of preventing the game from escaping, and holding it at bay, until the arrival of the rest of the hunters. They had gone, it seems, too, in sufficient numbers to authorize the classical boast of Mr. Johnson, "that if they (meaning the Mississippians) came down, their hides wouldn't hold shucks."

There is one more witness, whose testimony is positive to the point. It is Mr. Harris. He swears, clearly and unequivocally, that Johnson met him on the evening of the affray, told him that the Mississippians had insulted Mr. Redding, and directly solicited him to go with Redding's friends to the Galt House and see him righted. Mr. Harris says he refused to go, whereupon Johnson exclaimed, "Are you a friend of Redding's?" thereby showing how strong was the feeling when even a mere refusal to participate in the violence was considered as proof that the man refusing was no friend of Redding.

Such, gentlemen, is the positive proof of the conspiracy. It consists of the evidence of three disinterested and honest

witnesses, two of whom were directly and strongly solicited to participate in the matter. The testimony of each of these witnesses corroborates that of the other two. The facts sworn to have a natural order and connection. There is a verisimilitude about the whole story, which would not belong to either portion by itself. The testimony is entitled to much more weight than if it had been the recital of a single witness; for if you believe one of the witnesses you must give credit to all. One of them swears that he heard Johnson, in Redding's shop, propose to Redding and his friends that he should get "Bill Holmes" and "give them hell." The next witness saw Johnson on the street immediately after, in company with "'Bill Holmes," who seems to have been the Achilles of these Myrmidons; explaining to him how his dear Patroclus, Redding, had been insulted by the hectoring Mississippians, and urging him to vengeance. Again the same witness met Johnson, and was informed by him that a portion of his banditti had already taken possession of the passes of the Galt House, and that if the Mississippians appeared, "their hides would n't hold shucks." The third witness swears to a positive solicitation from Johnson, that he should join in the foray, and to the expression of strong indignation by this slayer of cattle upon his refusal to do so.

Johnson was the "Malise" of the party, "the messenger of blood and brand" sent forth to summon the clansmen true. Too well did he perform his duty. He collected his friends and conducted them like beasts to the slaughter; while he himself found the "manhood," which, according to his boast, distended his hide, rapidly descending to his heels. But enough, for the present, of this vaporing worthy; I shall pay my respects to him hereafter.

I will now proceed, in pursuance of the plan I had prescribed, to show the existence of the conspiracy, by the circumstantial evidence, which is, if possible, more irrefragable than the direct testimony; but yet most beautifully illustrates and confirms it. I will exhibit to you a chain of facts, linked together by a natural and necessary connection, which I defy

even the strong arm of the opposing counsel to break. I will weave a cable upon whose unyielding strength the defense may safely rely to ride out the storm of this furious prosecution.

Mr. Redding went to the Galt House after the affair at his shop for the purpose, as he avows, of obtaining the names of the Mississippians that he might procure process against them from the civil authorities. On his way, as he confesses, he armed himself with a deadly weapon, which, however, I am bound in justice to say, he never had the courage to use. A number of individuals accompanied and followed him, whose manner and strange appearance excited universal attention even in the bar-room of the most frequented hotel in the western country. Their strange faces and strange actions excited general apprehension. Nearly every witness to the unfortunate catastrophe, has deposed that he was struck with the "strange faces" congregated in the bar-room. The learned counsel on the other side has attempted to prove in the examination, and will, no doubt, insist in the argument, that that room is daily crowded with strangers from every part of the country; that the excellence of the fare and the urbanity of its proprietors, invite to the Galt House a large portion of the traveling public, and that consequently it is nowise remarkable that strange faces should be observed in the bar-room. Though I admit the gentleman's premises, I deny his conclusion. That strangers should frequent the Galt House is not wonderful; they do it every day, and for that very reason strange faces, under ordinary circumstances, arouse neither remark nor attention. That the "strange faces" of Mr. Redding's friends should have excited remark and scrutiny, not only from the inmates of the house but from strangers themselves, is truly wonderful, and can be accounted for only by admitting that there was something very peculiar in their conduct and appearance.

They went there prepared for pre-concerted action. Having a common object and a well-arranged plan, a glance or a motion sufficed to convey intelligence from one to the other.

Tell-tale consciousness spoke from each countenance. Their looks, unlike the mysterious brotherhood, gave up to the observer the very secret they wished thereby to conceal. There is a strange and subtle influence, a kind of mental sense by which we acquire intimation of men's intentions, even before they have ripened into word or action. It seems, on such occasions, as if information was conveyed to the mind by a sort of natural magnetism, without the intervention of the senses.

Thus, in this case, all the by-standers were impressed at once with the conviction that violence was intended by the strange men who had attracted their attention. These men, it is proven, were the friends and intimate companions of Redding. Most of them, though living in the city of Louisville, were not in the habit of going to the Galt House, and yet, by a singular coincidence, had all assembled there on this occasion. They were remarkably stout men, constituting the very élite of the thews and muscle of Louisville, and many of them noted for their prowess in the vulgar broils of the city. Why had they thus congregated on this occasion? Why their strange and suspicious demeanor? I will show you why. It will not be necessary to await the actual fight to become fully conversant with their purpose. It found vent in various shapes, but chiefly bubbled out in the unguarded remarks and almost involuntary expressions of the more garrulous of the party.

I shall be compelled, even at the risk of being tedious, to glance at the evidence of a number of the witnesses in showing you the circumstances at the Galt House, which conclusively indicate the existence of the conspiracy.

Mr. Everett, one of the proprietors of the Galt House, says he was admonished by his barkeeper that a difficulty was about to arise, and he had better persuade Judge Wilkinson out of the bar-room. Accordingly, he went in and took the Judge away, and gives as a reason that he was alarmed at the strange faces in the bar-room, and apprehended difficulty; alarmed, not because the faces were those of strangers, but

because of something in their appearance which indicated concert and threatened violence.

Mr. Trabue was waiting in the room for supper, and says he heard someone remark, "if the Mississippians had not gone upstairs, they would have been badly treated"; in connexion with which remark, Redding was pointed out to him. This it seems was after the Judge had retired at the solicitation of Mr. Everett. Now who were to have treated the Mississippians badly, except Mr. Redding and his friends? Who else had any pretense for so doing? Can you doubt for a moment that the remark had a reference to Mr. Redding's party? It was probably made by one of them; but whether by one of them, or a stranger, it equally indicated their violent determinations. Mr. Trabue also proves that after Judge Wilkinson retired, Mr. Redding also retired; and when the Judge returned into the bar-room, Redding presently entered; followed, to use the language of Mr. Trabue "by a right smart crowd" of his friends. Now why did Redding thus go out, and return with his gang at his heels? Why were his movements thus regulated by the motions of the Judge?—Wherefore was it that every one expected a difficulty?

Mr. Redding, according to his own story, went to the Galt House simply for the purpose of obtaining the names of the gentlemen who had insulted him.

He had accomplished his ostensible object. He had obtained the names, and more than that, had gratified his base appetite by abusing one of the gentlemen in the most indecent and disgusting manner. No rowdy who ever visited his coffee-house could have excelled him in this, to the vulgar mind, sweet mode of vengeance. He had even driven the Judge from the room by the overwhelming torrent of his billingsgate epithets. To use an expression suited to his comprehension and feelings, he remained "cock of the walk." Yet he was not satisfied. He retired, and watched the return of the Judge, and then emboldened by his previous impunity

followed with his cutthroat band to complete the work of vengeance.

But to proced with the circumstantial evidence. Mr. Montgomery states that he was with Mr. Trabue at the Galt House when Redding came in after the names, and, also, when he came back just before the conflict; heard him use very rough language, and, also, heard Halbert remark that there would be "rough work with the Mississippians." Now this fully corroborates the testimony of Mr. Trabue on the same point, who heard the remark, but did not recollect who made it. This Marshall Halbert is the man who boasted, after the affair was over, that he had knocked down one of the Mississippians with a chair while his back was towards him, and recounted many other feats of daring to the astonishment of the listeners. I should judge him to be of the blood of honest Jack Falstaff, whose killing, as everybody knows, was always by word of mouth, and whose deeds of desperate valor were so unfortunate as to find neither historian nor believer except himself. At all events Halbert, according to his own confession, was one of the conspirators, and I have no doubt performed his part in the affray as well as he knew how, and with much greater humanity than he pretends. In addition to the above remark of Halbert's, Mr. Montgomery states that he heard several persons say, at a time when the defendants were not in the room, that they would beat the Mississippians well.

General Chambers, who lives opposite the Galt House, and is in the daily habit of visiting it, says he went into the bar-room just before the affray, that he observed persons whom he was not in the habit of seeing there, and that from their appearance and demeanor, his suspicions were immediately aroused.

I attach great weight to the testimony of Gen. Chambers. His character for intelligence and observation needs no comment from me; and the fact that his suspicions were aroused, must convince everyone that cause for alarm existed.

The next testimony to which I shall refer is that of Mr.

Oliver. He says that he was acquainted with Mr. Meeks, and was taking a social glass with him on the evening of the affray, when Meeks started off, saying he must go to the Galt House (which was on the opposite side of the street), that he was bound to have a fight that night, and "by G—d he would have one." You will recollect that Meeks was one of the persons who collected around Redding immediately after the affair at the shop, and seconded Johnson's proposition to get Bill Holmes and "give them h—l," by saying "they would go anyhow, and have a spree." Can you doubt for a moment, that the observation made by this unfortunate man to Mr. Oliver, as just recited, had relation to the previous arrangement with Johnson and others at Redding's shop? The remark of Meeks seems to me, taken in connection with his previous and subsequent conduct, almost conclusive of itself as to the existence of a conspiracy. I had almost forgotten to observe Mr. Oliver's statement that Meeks, before he started, tied a knot in the small end of a cowhide which he carried, manifestly to prevent it from slipping out of his hand in the conflict which he so eagerly courted. His knife, by a sort of pious fraud, had been taken from him by Mr. Oliver, otherwise the result might have been very different. The prudent caution of Mr. Oliver in disarming him of this weapon, proves how strong must have been the indications of his violent disposition.

Mr. Reaugh says he was at the Galt House on the evening of the affray, and saw Redding in conversation with Rothwell and Halbert—he also saw Holmes and Johnson. Something in the demeanor of the party induced him to ask Johnson what was the matter. Johnson replied by relating the affair of the shop. Upon which Reaugh observed "if the Mississippians fall into the hands of these men, they will fare rather rough." "Yes," replied the worthy butcher, "they would skin them quicker than I could skin a sheep." Mr. Reaugh states that he made the remark to Johnson because of the remarkable size and strength of the men to whom he alluded; the strange manner in which they had assembled, and the

fact that he knew them to be friends of Redding, and that Redding had been in a quarrel with the Mississippians.

Mr. Miller states that being a member of the grand jury, and having heard of the affray at Redding's, he went into a tin shop to enquire about the matter, when Mr. Halbert came in and boasted much of what he intended to do. Witness then went to the Galt House for supper, when he heard Redding abusing Judge Wilkinson, and challenging him for a fight. Witness advised Halbert to take Redding away, observing that he, witness, was on the grand jury, had the names, and would have all the matter attended to. Someone, he thinks Johnson, then remarked that "if he didn't leave the room, he'd see the finest sort of beef-steaks served up." Presently he heard the exclamation, near the counter, "there they are, all three of them," and the crowd immediately closed in upon the persons so indicated.

Mr. Waggry, also, heard the remark about the "steaks," and then heard someone exclaim "we'll have a hell of a fight here just now." He also heard Mr. Miller advise Halbert to take Redding away.

Mr. Brown swears that he heard Mr. Miller tell Mr. Redding he was not taking the proper course; he should have the matter before the grand jury; whereupon someone said "hush you Billy Miller, if it comes to handy-cuffs the boys will settle it." The witness then became so apprehensive of a fight that he left the room.

Though Miller is not positive as to the person who made use of the expression about "serving up beef-steaks," yet no one, I take it, will hesitate as to his identity. Who but Johnson could speak in such rich and technical language? Who but Johnson could boast of "having as much manhood as was ever wrapped in the same extent of hide"? While, at the same time, he had so arranged it, that the "hides" of the Mississippians "would not hold shucks." Who but this unmitigated savage would talk of "skinning" a gentleman "quicker than I could skin a sheep"? Why, he rubs his hands, licks his lips, and talks of serving up Christians in the shape of

"steaks," with as little compunction as you or I would exhibit in eating a radish. The cannibal! He should go, at once, to New Zealand and open his shambles there. His character would suit that country, and I doubt not he would obtain great custom, and find ample demand for his human "steaks." Why, gentlemen, I should be afraid to buy meat out of his stall. He talks as if he supplied it by burking. I should expect some day to swallow an unbaptized infant in the disguise of a reeking pig, or to eat a fellow citizen, *incog.*, in a "steak." Such a fellow should be looked to. But again. What meant the expression deposed to by Reaugh, "There they are, all three of them, now"? It was the signal for the conspirators to close in. It clearly proves a pre-concerted plan. No names were mentioned, and without a previous understanding, the expression would have been nonsense. Most of the party did not know the Mississippians, hence it was necessary that some one should give intimation when they entered the room. The expression, "There they are," was the signal for the onset. What meant the expression sworn to by Waggry, "We'll have a hell of a fight here just now"?

What conclusion do you draw from the response made to Miller, when he advised Redding to bring the matter before the Grand Jury, "Hush you, Billy Miller, and if it comes to handicuffs the boys will settle it"? If what comes to handicuffs? And who were the boys? Why, if the quarrel with the Mississippians comes to handicuffs. And as for the "boys," there was not a man present who did not know who they were.

Redding was one of the "boys," and a very bad boy, too. Billy Holmes was another. Marshall Halbert was a perfect "broth of a boy," and if his own story is entitled to credit, he must have been twins, for he acted the part of at least two in the fight. Bill Johnson was as much of a boy as ever was "wrapped up in the same amount of hide," though his extraordinary modesty has induced him to deny the soft impeachment. The unfortunate Meeks and Rothwell were two

of the "boys"; and last, though not least, comes Harry Oldham, the "Jack Horner" of the party. He "sat in the corner" till the fight was nearly over, when he "put in his thumb" and "pulled out," not "a plum," but a pistol, and ever since has been exclaiming, "What a brave 'boy' am I."

Yes, gentlemen of the jury, these were the "boys" whose strange appearance aroused the suspicions and excited the apprehensions of all.

Permit me, now, to call your attention to the testimony of Mr. Donoghue. It is clear and conclusive. He swears that on the evening of the affray, and just before it occurred, being in the bar-room of the Galt House, he heard Rothwell ask Redding "if they were there"; upon being answered in the negative, he exclaimed "come, let us go upstairs and bring them down, and give them hell." Rothwell, was the brother-in-law of Redding, had been informed by Redding of his grievances, and had accompanied him to the Galt House. Whom did he mean, when he asked if "they were there"? The Mississippians undoubtedly. Whom did he propose to drag from their rooms, and chastize? Of course the same persons for whom he had just enquired. Rothwell asked "if they were there," when the defendants came in, someone cried out "there they are, all three of them." These two expressions manifestly emanated from persons who understood each other, and were engaged in pursuit of a common object.

If these remarks had not relation to some previously concerted plan of action, they would be unmeaning and foolish: but granting the existence of the conspiracy I have supposed, and every word is pregnant with meaning; full of force, weight and effect.

Mr. Raily deposes to the caution given by Miller to Redding; also to the fact that Redding left the room when Judge Wilkinson had retired, and came back again immediately after the Judge had returned. He also saw Oldham after the affair was over, putting a pistol into his pocket, and wiping, with his handkerchief, the blood from a double-edged dirk.

Mr. Pearson says he went to the Galt House just before supper, on the evening of the affray. As he stood behind the bar, one Capt. Rogers observed that there would be a fight. Presently, witness met Marshall Halbert, and told him he ought to stop it, meaning the fight. Halbert said "no, let it go on." This was before Redding had commenced abusing Judge Wilkinson, and proves that the idea of a fight did not originate from that circumstance. The Judge came, and Redding abused him. He went out, and Redding followed. He returned, and presently so did Redding with a crowd at his heels. Seeing the crowd, and apprehending violence, Mr. Pearson was in the act of leading the Judge out of the room, when the crowd rushed upon Murdaugh; the affray commenced, and the Judge stopped, refusing to leave the room until he saw his friend out of the difficulty. Need I ask you if he was right in so doing. Mr. Banks says he saw Redding just after the first affray and asked him if he was hurt. He said no, but that he would have satisfaction and that he could whip them all three. Dr. Graham says that after Judge Wilkinson had left the bar-room the first time he heard someone observe, "the d—d coward has run."

Does not Mr. Oldham's testimony prove the conspiracy? I do not mean directly, but circumstantially. He says he was not present at the fight in the bar-room, and knew nothing of the affair, nor of the defendants. He says he was standing in the passage when the door opened, and he received a cut from Dr. Wilkinson, whom he knocked down for his pains. After fighting in the crowd awhile, he saw Murdaugh retreating up stairs, and asking for a pistol, whereupon he was reminded of his own pistol, which he immediately drew and discharged at the young gentleman, giving him not the weapon, but its contents, to-wit, a bullet, split in three pieces. This worthy gentleman, who is certainly

> "as mild a mannered man
> As ever scuttled ship or cut a throat,"

swears positively that he did not know either of the defendants; that he belonged to neither party in the affray, and

that he fought, to use his own descriptive and unrivalled phraseology, entirely "upon his own hook."

Surely Mr. Henry Oldham must be the knight-errant of the age, the Don Quixote of the west, the paragon of modern chivalry. He fights, not from base desire of vengeance, nor from sordid love of gold—not even from patriotism or friendship; but from a higher and loftier sentiment—from his pure, ardent, disinterested, unsophisticated love of glorious strife. Like Job's war-horse, he "smelleth the battle afar off," and to the sound of the trumpet he saith, "Ha! ha!" To him

> "There's something of pride in the perilous hour,
> What'er be the shape in which death may lower,
> For fame is there to tell who bleeds,
> And honor's eye on daring deeds."

You have heard, gentlemen, of the bright, warm isles which gem the oriental seas, and are kissed by the fiery sun of the tropics, where the clove, the cinnamon and the nutmeg grow; where the torrid atmosphere is oppressed with a delicious, but fierce and intoxicating influence. There the spirit of man partakes of the same spicy qualities which distinguish the productions of the soil. Even as the rinds of their fruits split open with nature's rich excess, so do the human passions burst forth with an overwhelming violence and prodigality unknown till now in our cold, ungentle clime. There, in the islands of Java, Sumatra, the Malaccas, the others of the same latitude, cases similar to that of Mr. Henry Oldham are of frequent occurrence. In those countries it is called "running a muck." An individual becomes so full of fight that he can no longer contain it. Accordingly, he arms himself with a species of dagger, very similar to that from which Mr. Oldham wiped the blood with his pocket handkerchief, and rushing into the public streets, wounds and slays indiscriminately among the crowd. It is true that this gallant exploit always results in the death of the person performing it, the people of the country entertaining a foolish notion that it is too dangerous and expensive a mode of cultivating national bravery. But in the present instance I trust this

rule will be relaxed. Mr. Oldham is the only specimen we possess of this peculiar habit of the spice-islands, and he should be preserved as a curiosity.

But, alas! the age of chivalry has gone by, and in the performance of my duty I fear I shall have to exhibit some little defects in the character of Mr. Oldham, calculated in this censorious day to detract from his general merits.

It is with great pain I feel constrained to say (for he is a sort of favorite of mine), that telling the truth is not one of his knightly accomplishments, and that his heroic conduct in the affray at the Galt House was nothing more nor less, according to his own story, than a downright cowardly attempt at assassination.

First, as to his veracity. He says that he was cut in the passage by Dr. Wilkinson, to whose identity he swears positively; yet it is proven by half a dozen unimpeachable witnesses that the Doctor was, at that time, *hors du combat*, beaten to a mummy—almost lifeless, and perfectly limber—while his knife had fallen from his relaxed and nerveless grasp upon the floor of the bar-room, where it was afterwards picked up.

Yet Oldham swears, manfully, that it was the Doctor who cut him, though, when asked if his face was not bloody, he replied that the passage was too dark to enable him to distinguish faces. If he could not see whether the face of the person who cut him was bruised or bloody, how dare he swear it was Dr. Wilkinson, whom he admits he had never seen before?

Yet, though his vision was so dull in regard to this matter, it was almost supernaturally keen upon another. He swears that he was cut by a dirk knife, "*with a white handle.*" Now is this dusky passage, where he could not see his assailant's face, how could he distinguish so accurately the character of the weapon, and more especially of the handle. The handle of such a knife as either of those exhibited would be entirely concealed in the grasp of the holder. But Mr. Oldham could see through the hand and swear to the color of the

handle, even when he could not distinguish the color of the assailant's face.

The prosecution seems to be afflicted with a monomania on the subject of white-handled knives. The white handles cause them greater terror, and excite more of their observation, than the blades. One would be almost led to suppose, from the evidence, that the defendants held by the blades and fought with the handles. These white handles flash before their eyes like the bright inscription upon the dim steel of a Turkish cimeter. I hope, though with many misgivings, that none of them will ever die of a "white handle."

But, to return to my subject, why in the name of all that is human or humane, did Oldham shoot at Murdaugh, whom he acknowledges he did not know, of whose connection with Dr. Wilkinson he was unacquainted, and who had not attempted to do him the slightest injury? According to his own account of the matter, he acted the part of a base and cowardly assassin. If he tells the truth, he is an assassinating villain. If he does not, he is a perjured villain. I leave him choice of these two horns of the dilemma, though I doubt not the latter is the one upon which he is destined to hang. I can not believe in the existence of such a monster as he would make himself out to be, and have offered his conduct to you as evidence of the existence of a conspiracy, and of his participation in it. It is better that he should have the excuse of having fought in Redding's quarrel than no excuse at all.

Gentlemen of the jury, I have now performed that portion of my task which embraced the circumstantial evidence. Out of the mouths of fifteen different witnesses, most of them gentlemen of high character and undoubted veracity, I have exhibited to you an almost countless variety of circumstances, the occurrence of which, or any great portion of them, is absolutely incompatible with any other hypothesis than that of the existence of the conspiracy, which I proposed at the outset to prove. Upon that hypothesis all these circumstances are easily explicable, and in perfect accordance with the ordinary principles of human action. I have combined the scattered

strands of evidence. I have finished the cable which I promised, and now challenge the opposing counsel to try their strength upon it. They may pick it into oakum, but I defy them to break it.

There is one other argument in favor of the view that I have taken of the origin of this unfortunate affray, which may be properly introduced at this time, and with which I shall close this branch of the subject.

It arises out of the respective characters and positions in life of the two parties, and is, in my opinion, entitled to great weight. Who, judging of character and situation, was most likely to have sought and provoked the unfortunate conflict —Judge Wilkinson or Mr. Redding? The conduct of the Judge, under the opprobrious epithets heaped upon him by Redding in the bar-room, sufficiently indicates that, though he had previously given way to sudden passion, he was now cool, collected, and forbearing. His mind had recovered its balance, and he behaved on this occasion, as well as subsequently, with philosophical calmness. I doubt, gentlemen, whether any of you would have permitted Mr. Redding to have indulged, with impunity, in such unmeasured abuse. But the situation of the Judge was peculiar, and every inducement which could operate upon a gentleman warned him against participation in broils and battles. With buoyant feelings and pulse-quickening anticipations he had come more than a thousand miles, upon a pilgrimage to the shrine of beauty, not of blood—upon an errand of love, not of strife. He came to transplant one of Kentucky's fairest flowers to the warm gardens of the sunny South, there to bloom in beauty and in brightness. The marriage feast was spread; the bridal wreath was woven, and many bounding hearts and sparkling eyes chided the lagging hours. The thoughts of the bridegroom dwelt not upon the ignoble controversy which, for an unguarded moment had occupied his attention, but upon the bright and glorious future, whose rapturous visions were about to become enchanting realities. Under such circumstances Judge Wilkinson could not have desired the con-

flict. Had the fires of hell blazed in his bosom, they must have been quenched for a while. The very fiend of discord would have been ashamed, fresh from a voluntary, vulgar, bloody quarrel, and reeking with its unsightly memorials, to have sought the gay wedding banquet.

You can not believe he coveted or courted the unfortunate affray, without, at the same time, considering him destitute, not only of all sentiment of delicacy and refinement, but every characteristic of a man. Does his previous character warrant such a conclusion? He has, as has been shown to you in evidence, ever entertained the character of an honorable and upright gentleman. I see, by the sneer upon the lip of the adverse counsel that the term grates harshly upon his sensibilities. But, I repeat it, Judge Wilkinson has ever entertained the character of a gentleman, a character directly at war with the supposition that his conduct on this occasion resulted otherwise than from necessity. I mean by "a gentleman" not the broadcloth but the man; one who is above doing a mean, a cowardly, or a dishonest action, whatever may be the temptation; one who forms his own standard of right and will not swerve from it; who regards the opinions of the world much, but his own self-respect more. Such men are confined to no particular class of society, though, I fear, they do not abound in any. I will save the learned counsel the trouble of translating his sneer into language, by admitting that they are to be found as readily among mechanics as elsewhere.

Such a man I believe Judge Wilkinson to be. Such has ever been his character, and he is entitled to the benefit of it on this occasion. It ought to have, and I know it will have very great weight with you. Good character always has been, and ever should be, a wall of strength around its possessor, and a seven-fold shield to him who bears it.

This is one of the advantages virtue has over vice—honorable over dishonorable conduct—an advantage which it is the very highest interest of society to cherish and enforce. In proportion to the excellence of a man's character is, and ever

ought to be, the violence of the presumption that he has been guilty of no crime. I appeal, then, to Judge Wilkinson's character, to prove that he could not have desired this unfortunate controversy; that it is impossible he should have been guilty under the circumstances which then surrounded him, of the crime of wilful and malicious murder. What, on the other hand, was the condition of the conspirators? Redding had been going about from street to street, like Peter the Hermit, preaching up a crusade against the Mississippians. Johnson, like Tecumseh—but no, I will not assimilate him to that noble warrior—like an Indian runner, was threading each path in the city, inciting his tribe to dig up the tomahawk, and drive it, not into the scalps, but the "steaks" of the foe. But I will not pursue this point at greater length.

I proposed, after arguing the position that there actually was a conspiracy to chastise the defendants, and inflict upon them great bodily harm, to show, in the next place, that the defendants had good reason to believe such a conspiracy existed, whether in point of fact it did or not. Most of the arguments bearing upon this proposition have been already advanced in support of the other. These I will not repeat. There are one or two others worthy of notice. What could Judge Wilkinson have supposed from the conduct of Redding, but that he sought and provoked a difficulty? What else could he conclude from the unmitigated abuse which was heaped upon him, from the very sluices of vulgarity? That the Judge apprehended violence is evident from the warning which he gave. He told Redding that he might say what he pleased, but not to lay his hands upon him; if he did, he would kill him. He could not be supposed to know that Redding came only for the names. When Meeks stepped up to Murdaugh and struck him with his clubbed whip, while the crowd closed in around, what could Murdaugh reasonably expect but violence and bodily harm, resulting from preconcerted arrangement? Without going at length into an argument on this point, I take it for granted, no one will deny that the defendants had ample grounds for apprehending the

existence, on the part of Mr. Redding and his friends, of a conspiracy, to commit upon them personal violence.

Let us now look a moment at the conduct of the defendants, at the Galt House, and see whether it transcended the bounds of right, reason or prudence. When Murdaugh and the Doctor entered the room, the exclamation was made, by someone, loud enough for all to hear, "There they are—all three of them, now"; upon which, according to nearly all the witnesses, Mr. Redding made the remark to Murdaugh, "You are the man that drew the bowie knife on me." You will recollect Redding had just crossed Judge Wilkinson's path, and placed himself with his back against the counter, manifestly with the object of bringing on the fight. Murdaugh, indignant at being publicly charged with having drawn a bowie knife upon an unarmed man, replied, "that any one who said he had drawn a bowie knife told a d—d lie;" whereupon instantly steps up Meeks, with his knotted cowhide, exclaiming, "You are the d—d little rascal that did it," at the same time inflicting upon him a very severe blow. By the by, this assertion of Meeks proves that he had been at Redding's after the first affray, and heard a full account of it. It is urged against the Judge, that when Mr. Everett led him to his room, he asked for pistols. I think an argument may be drawn from this circumstance in his favor. His requisition for arms proves that he considered himself and his friends in great personal danger. He manifestly required them not for offense, but for defense. Had he intended an attack, he would not have gone down to the bar-room without first obtaining the weapons he desired. Men do not voluntarily attempt the lives of others without being well prepared. It is evident that Judge Wilkinson and his friends thought only of the protection of their own persons; for they went downstairs provided only with the ordinary weapons which they were accustomed to bear. Murdaugh and the Doctor had a pocket knife each; the same they had previously carried. They had added nothing to their armor, either offensive or defensive. The Judge, apprehensive of difficulty, had taken

his bowie knife, which, probably, he had not previously worn. When, at the solicitation of Mr. Everett, he retired, he doubtless informed his friends of what had just transpired in the bar-room, and expressed his fears of violence. This accounts for the readiness with which Murdaugh met the assault of the two powerful men who simultaneously rushed upon him.

The evidence is conclusive that Meeks commenced the attack, upon Murdaugh, by two rapid, violent blows of a cowhide; accompanied by a heavy blow from a stick or cane from the hands of Rothwell. At the same time he seized the hand of Murdaugh, in which, prepared for defense, was an open knife; but Murdaugh, with coolness and celerity, changed the weapon to his left hand, and used it according to the dictates both of law and common sense. The very first blow had driven him to the wall. The crowd closed around him: he could not retreat, and was justified, according to the strictest and most technical principles of even English jurisprudence, to take the life of the assailant. No man but a fool or a coward could have acted otherwise than he did. Was he not, according to the rule read by the District Attorney, in imminent danger of his life or of great bodily harm? Let the unhealed wound upon his head respond. Let his hat, which has been exhibited to you, answer the question. Upon this you may perceive two incisions, which must have been caused by a sharp, cutting instrument. No obtuse weapon was capable of the effect. The blows were manifestly sufficient to have caused death, but for the intervention of the elastic material, upon which their principal force was expended. The part, then, taken by Murdaugh in the affray was clearly defensive and justifiable. It is not pretended that Doctor Wilkinson took any other part in the affray than attempting to escape from its violence, unless you notice the evidence of Oldham, that he cut him as he fled from the room. He was beaten, first by Rothwell, then by Holmes, and if you take their own statements, by those two worthies, Halbert and Oldham. He was crushed almost to atoms. He had not a chance even for self-defense. Rothwell had left Murdaugh, after

striking him one blow, in charge of Meeks, and fell upon the Doctor. While beating the Doctor, he was stabbed by the Judge, near the dining room door. The Doctor fled round the room, still followed by Rothwell, who was again struck by the Judge, when upon the opposite side. The two blows paralyzed his powers; when Holmes stepped in and so completely prostrated the Doctor, that he was compelled to hold him up with one hand while he beat him with the other.

Neither offensive word nor action, upon this occasion, on the part of Doctor Wilkinson, is proven or pretended. It is perfectly clear that he was beaten by Redding's friends, simply because he was of the Mississippi party. I consider it highly disgraceful to the Grand Jury who found the bill, that he was included in it.

In reference to the part taken by Judge Wilkinson. It is proven beyond contradiction, by Mr. Pearson, a gentleman of undoubted veracity, that the Judge, at his solicitation, was in the act of leaving the room, as the affray commenced; when, witnessing the attack upon Murdaugh, he stopped, refusing to leave until he saw the result of the controversy, in which his friend was engaged. Standing in the corner of the room, he did not at first take part in the conflict; perceiving, doubtless, that Murdaugh was making good his own defense. Presently, however, he cast his eyes around and saw his brother trodden under foot, entirely powerless, and apparently either dead or in immediate danger from the fierce blows of Rothwell, who, as you have heard, was a man of tremendous physical power, and armed with a bludgeon, some say, a sword cane. Then it was he thought it necessary to act; and advancing through the crowd to the spot, he wounded the assailant, who was crushing out his brother's life. Gen. Chambers swears positively that Rothwell was beating, with a stick, and with great severity, someone whom the other witnesses identify as the Doctor, at the time he was stabbed near the dining room door. This produced a slight diversion in the Doctor's favor, who availed himself of it, by retreating, in a stooping posture, towards the passage door. Rothwell, how-

ever, pursued and beat him down, but was arrested in his violence by another blow from Judge Wilkinson, which, together with the puncture in his throat, received in all probability from a chance thrust of the sword cane in the hands of one of his own party, disabled him and caused his death. About this time Holmes was completing Rothwell's unfinished work, and the Doctor, hunted entirely around the room, fell, utterly exhausted, at the feet of his relentless pursuers. It is wonderful that he had strength enough to escape with Murdaugh and the Judge.

Such, briefly, were the parts enacted by these defendants, respectively, in this unfortunate affray—the result of which, none regret more than themselves. Considering the proof of the conspiracy, and the knowledge, or even the reasonable apprehension on the part of the defendants, of its existence, as affording them ample justification for their participation in the matter, I have not thought it necessary to go into a minute analysis of the evidence on this branch of the subject, nor to attempt to reconcile those slight discrepancies which will always occur in the testimony of the most veracious witnesses, in giving an account of a transaction viewed from different positions and at different periods of time.

The law of self-defense has always had, and ought to have, a more liberal construction in this country than in England. Men claim more of personal independence here; of course they have more to defend. They claim more freedom and license in their actions toward each other, consequently there is greater reason for apprehending personal attack from an enemy. In this country men retain in their own hands a larger portion of their personal rights than in any other; and one will be authorized to presume an intention to exercise and enforce them, upon grounds that, in other countries, would not excite the slightest suspicion. It is the apprehension of impending harm, and not its actual existence, which constitutes the justification for defensive action. If mine enemy point at me an unloaded pistol or a wooden gun, in a manner calculated to excite in my mind apprehensions of immediate,

great bodily harm, I am justifiable in taking his life, though it turn out afterwards that I was in no actual danger.

So, on the other hand, if I take the life of another without being aware of any intended violence on his part, it will constitute no excuse for me to prove that he intended an attack upon me.

The apprehension must be reasonable, and its reasonableness may depend upon a variety of circumstances—of time, place and manner, as well as of character. The same appearance of danger would authorize greater apprehension, and of course readier defensive action, at night than in the day time. An attack upon one in his own house would indicate greater violence, and excuse stronger opposing action, than an attack in the street.

Indications of violence from an individual of known desperate and dangerous character will justify defensive and preventive action, which would be inexcusable toward a notorious coward. A stranger may reasonably indulge from the appearance or threats of a mob, apprehensions that would be unpardonable in a citizen surrounded by his friends and neighbors.

Bearing these observations in mind, let us look at the situation of the defendants. They were attacked at their hotel, which, for the time being, was their house. They were strangers, and a fierce mob had gathered around them, indicating, both by word and deed, the most violent intentions. They were three small, weak men, without friends—for even the proprietor of the house, who should have protected them, had become alarmed and left them to their fate. Their enemies were, comparatively, giants—dangerous in appearance and desperate in action. Was there not ample ground for the most fearful apprehensions?

But the District Attorney says they are not entitled to the benefit of the law of self-defense, because they came down to supper, and thus placed themselves, voluntarily, within reach of the danger. According to his view of the case, they should have remained in their chamber, in a state of siege, without

the right to sally forth even for provisions, while the enemy, cutting off their supplies, would, doubtless, soon have starved them into surrender. But it seems there was a private entrance to the supper table, and they should have skulked in through that. No one but a craven coward, unworthy of the privileges of a man, would have followed such a course. The ordinary entrance to supper was through the bar-room. They had a right to pass this way. No law forbade it. Every principle of independence and self-respect prompted it. And through that bar-room I would have gone, as they did, though the floor had been fresh sown with the fabled dragon's teeth and bristling with its crop of armed men.

I care not whether the assailing party had deadly weapons or not, though I will by and by show they had, and used them, too. But the true question is, whether the defendants had not good reason for believing them armed and every way prepared for a desperate conflict. I have shown already that Dr. Wilkinson and Murdaugh did not transcend the most technical principle laid down by the Commonwealth's attorney; not even that which requires a man to run to the wall before he can be permitted to defend himself—a principle, which, in practice, is exploded in England, and never did obtain in this country at all. But, says the learned Attorney, Judge Wilkinson interfered, and took part, before he was himself attacked; he had no right to anticipate the attack upon himself; he had no right to defend his friend; he had no right to protect his brother's life. Now, I differ from the worthy counsel on all these points; I think he had a right to prevent, by anticipating it, violence upon his person; he had a right to defend his friend, and it was his sacred duty to defend his brother's life. Judge Wilkinson was the most obnoxious of the party; his friends were already overpowered; he could not expect to escape; and in a moment the whole force of the bandit gang would have been turned upon him.

The principles of self-defense, which pervade all animated nature, and act toward life the same part that is performed by the external mechanism of the eye toward the delicate sense

of vision, affording it, on the approach of danger, at the same time, warning and protection, do not require that action shall be withheld till it can be of no avail. When the rattlesnake gives warning of his fatal purpose, the wary traveler waits not for the poisonous blow, but plants upon his head his armed heel, and crushes out, at once, "his venom and his strength." When the hunter hears the rustling in the jungle, and beholds the large green eyes of the spotted tiger glaring upon him, he waits not for the deadly spring, but sends at once through the brain of his crouching enemy the swift and leaden death.

If war were declared against your country by an insulting foe, would you wait till your sleeping cities were wakened by the terrible music of the bursting bomb? till your green fields were trampled by the hoofs of the invader and made red with the blood of your brethren? No! you would send forth fleets and armies—you would unloose upon the broad ocean your keen falcons—and the thunder of your guns would arouse stern echoes along the hostile coast. Yet this would be but national defense, and authorized by the same great principle of self-protection, which implies no less to individuals than to nations.

But Judge Wilkinson had no right to interfere in defense of his brother; so says the Commonwealth's attorney. Go, gentlemen, and ask your mothers and sisters whether that be law. I refer you to no musty tomes, but to the living volumes of nature. What! a man not permitted to defend his brother against conspirators? against assassins who are crushing out the very life of their bruised and powerless victim? Why, he who would shape his conduct by such a principle does not deserve to have a brother or a friend. To fight for self is but the result of an honest instinct, which we have in common with the brutes. To defend those who are dear to us, is the highest exercise of the principle of self-defense. It nourishes all the noblest social qualities, and constitutes the germ of patriotism itself.

Why is the step of the Kentuckian free as that of the

bounding deer; firm, manly and confident as that of the McGregor when his foot was on the heather of his native hills, and his eye on the peak of Ben Lomond? It is because he feels independent and proud; independent in the knowledge of his rights, and proud in the generous consciousness of ability and courage to defend them, not only in his own person, but in the persons of those who are dear to him.

It was not the blood that would desert a brother or a friend which swelled the hearts of your fathers in the "olden time," when, in defense of those they loved, they sought the red savage through all the fastnesses of his native forest. It was not such blood that was poured out, free as a gushing torrent, upon the dark banks of the melancholy Raisin, when all Kentucky mourned her warrior sires. They were as bold and true as ever fought beneath a plume. The Roncesvalles pass, when fell before the opposing lance the harnessed chivalry of Spain, looked not upon a braver or a better band.

Kentucky has no law which precludes a man from defending himself, his brother, or his friend. Better for Judge Wilkinson had he never been born, than that he should have failed in his duty on this occasion. Had he acted otherwise than he did, he would have been ruined in his own estimation, and blasted in the opinion of the world. And young Murdaugh, too; he has a mother, who is looking even now from her window, anxiously watching for her son's return—but better, both for her and him, that he should have been borne a bloody corpse to her arms, than that he should have carried to her, unavenged, the degrading marks of the accursed whip.

But there was danger, as well as degradation. Their lives were in imminent hazard. Look at the cuts in Murdaugh's hat and upon his head, the stab received by the Judge, and the wounds inflicted upon the Doctor. Besides the overwhelming superiority in number and strength, the conspirators had very greatly the advantage in weapons. We have proven the exhibition and use, by them, of knives, dirks, a sword-cane and a pistol, without counting the bludgeons,

which, in the hands of such men, are weapons little less deadly than the others.

Need I dwell longer upon this point? Need I say that the defendants are no murderers? that they acted in self-defense, and took life from necessity, not from malice?

But there is a murderer—and strange to say, his name appears upon the indictment, not as a criminal, but as a prosecutor. His garments are wet with the blood of those upon whose deaths you hold this solemn inquest. Yonder he sits, allaying for a moment the hunger of that fierce vulture, conscience, by casting before it the food of pretended regret, and false, but apparent eagerness for justice. He hopes to appease the manes of his slaughtered victims—victims to his falsehood and treachery—by sacrificing upon their graves a hectacomb of innocent men. By base misrepresentations of the conduct of the defendants, he induced his imprudent friends to attempt a vindication of his pretended wrongs, by violence and bloodshed. His clansmen gathered at his call, and followed him for vengeance; but when the fight began, and the keen weapons clashed in the sharp conflict—where was this wordy warrior? Aye, "Where was Roderick then?" No "blast upon his bugle horn" encouraged his companions as they were laying down their lives in his quarrel; no gleam of his dagger indicated a desire to avenge their fall—with treacherous cowardice he left them to their fate, and all his vaunted courage ended in ignominious flight. Sad and gloomy is the path that lies before him. You will in a few moments dash, untasted, from his lips the sweet cup of revenge; to quaff whose intoxicating contents he has paid a price that would have purchased the goblet of the Egyptian queen. I behold gathering around him, thick and fast, dark and corroding cares. That face, which looks so ruddy, and even now is flushed with shame and conscious guilt, will from this day grow pale, until the craven blood shall refuse to visit his haggard cheek. In his broken and distorted sleep, his dreams will be more fearful than those of the "false, perjured Clarence"; and around his waking pillow, in the deep

hour of night, will flit the ghosts of Rothwell and Meeks, shrieking their curses in his shrinking ear. Upon his head rests not only all the blood shed in this unfortunate strife, but also the soul-killing crime of perjury; for, surely as he lives, did the words of craft and falsehood fall from his lips, ere they were hardly loosened from the Holy volume. But I dismiss him, and do consign him to the furies—trusting, in all charity, that the terrible punishment he must suffer from the scorpion-lash of a guilty conscience will be considered in his last account.

Johnson and Oldham, too, are murderers at heart. But I shall make to them no appeal. There is no chord in their bosoms which can render back music to the touch of feeling. They have both perjured themselves. The former cut up the truth as coolly as if he had been carving meat in his own stall. The latter, on the contrary, was no longer the bold and hot-blooded knight, but the shrinking, pale-faced witness. Cowering beneath your stern and indignant gaze, marked you not how "his coward lip did from its color fly," and how his quailing eye sought from floor to rafter protection from each honest glance?

It seems to me that the finger of Providence is visible in the protection of the defendants. Had this affair occurred at Mr. Redding's coffee-house, instead of at the Galt House, nothing could have saved them. Their lives would have been sworn away, without remorse, by Redding and his gang. All that saved them from sacrifice was the accidental presence of gentlemen, whose testimony can not be doubted, and who have given an honest and true account of the transaction.

Gentlemen of the jury, I shall detain you no longer. It was, in fact, a matter of supererogation for me to address you at all, after the lucid and powerful exposition of the case which has been given by my respected friend, Colonel Robertson. It was doubly so, when it is considered that I am to be succeeded by a gentleman (Mr. Rowan), who, better, perhaps, than any other man living, can give you, in his profound learning and experience, a just interpretation of the laws of

your State; and in his own person a noble illustration of that proud and generous character which is a part of the birthright of a Kentuckian.

It is true, I had hoped, when the evidence was closed, that the Commonwealth's Attorney might have found it in accordance with his duty and his feelings to have entered, at once, a *nolle prosequi*. Could the genius of "Old Kentucky" have spoken, such would have been her mandate. Blushing with shame at the inhospitable conduct of a portion of her sons she would have hastened to make reparation. Gentlemen, let her sentiments be spoken by you. Let your verdict take character from the noble State which you in part represent. Without leaving your box, announce to the world that here the defense of one's own person is no crime, and the protection of a brother's life is the subject of approbation, rather than of punishment.

Gentlemen of the jury, I return you my most profound and sincere thanks for the kindness with which you have listened to me, a stranger, pleading the cause of strangers. Your generous and indulgent treatment I shall ever remember with the most grateful emotions. In full confidence that you, by your sense of humanity and justice, will supply the many defects in my feeble advocacy, I now resign into your hands the fate of my clients. As you shall do unto them, so under like circumstances may it be done unto you.

Mr. Thompson. I know you are already wearied by the lengthened protraction of this cause. I am also aware of the high and great claims and unqualified ability of the gentleman who has preceded me. By retracing I can not hope to strengthen the positions assumed by him; and so well has he swept the field, but little remains for a gleaner. The mature experience, the distinguished and well-deserved reputation of the gentleman who will conclude the defense, also admonish me of the propriety of taxing your patience as lightly as consistent with a succinct statement of the law, and a brief commentary upon the evidence in the cause.

When all that has been alleged against the defendants, in

argument, has been so ably answered, I assure you that nothing but a sense of duty and a compliance with the wishes of the accused would induce me to address you. The defendants come before you, gentlemen, not as in ordinary cases. Among the wise provisions and wholesome customs of the common law it was ordained that the triers should be of the *visne* or neighborhood. Jurors, thus selected, were presumed, from their acquaintance with the parties, and their knowledge of character, to be better prepared to adjudicate justly upon those arraigned for a violation of the laws where the offense was committed, and there only, could the party be tried. His character and reputation might shield him from suspicion and prejudice—the whole tenor of his life—the uniform purity of his conduct, would often of themselves, among his neighbors and acquaintances, refute any imputation of crime.

The trial by compurgation is not known to our laws; but the testimony of an upright life, and an unblemished character, is a more convincing, and less suspicious proof of innocence, than the compurgational oath of friends, too partial, perhaps, and too confiding. The moral force of that good name, and the countenance of those steadfast friends, which would encircle and protect the defendants at home, they have not here. But, gentlemen, they are not only strangers, for from home and friends, they are also arraigned, and upon trial before you, not of the *visne* or county, where the offense is alleged to have been committed. By a change of venue, this cause has been translated to another county, because, where the offense was committed, the defendants have been driven from the temple of justice by prejudices unwarranted by the facts, fomented by the newspapers, and sedulously circulated and impressed upon the public mind by those who originated, and upon whose skirts rests the blood of the unfortunate catastrophe, in the tragic events of which the accused are implicated.

The defendants, Dr. Wilkinson, Murdaugh and Judge Wilkinson, are now put upon their trial upon two distinct and separate indictments. The first charges Judge Wilkinson with

the murder of John Rothwell, and charges Dr. Wilkinson and Murdaugh, as principals in the first degree, as being present, aiding, abetting and assisting him in the murder. The second, charges Murdaugh with being guilty of the murder of Alexander Meek, and charges Judge Wilkinson and Dr. Wilkinson as principals in the first degree, present, aiding, assisting and abetting him in the murder. As you have learned from the testimony the same, and but the one fatal and unfortunate affair at the Galt House, in Louisville, is the foundation of these two distinct and separate indictments. By the examining court, whose duty and province it is, if, upon inquiry, it deems a party brought before it so far culpable as to merit a stricter examination, to send him on to the Circuit Court for further trial, Dr. Wilkinson was discharged. No beneficial pupose in attaining justice; no requirement of law, demanded this double proceeding by distinct indictments. To the Doctor's conduct, the color of crime did not so far affix itself, but that the Mayor of Louisville, promptly, against the tide of public sentiment, dismissed him from further prosecution, as one in whom he found no fault. So inapprehensible was the Doctor, in the opinion and judgment of that officer of the law, a trial before a jury of his country was deemed not proper. I have not been able to perceive, nor do I now perceive, the propriety of including the Doctor in these indictments. In the affray at the tailor's shop, which is unconnected in point of fact, and in legal contemplation, is separated from and independent of the transaction at the Galt House; the Doctor not only committed no violence, but one of the witnesses tells you he attempted to separate the parties. Opportunity, with safety to himself, the provocation of seeing his brother insulted on his account, and then overpowered, would surely have been a sufficiently exciting cause for that wantonness and malevolence of heart with which he is now charged, if in truth "fatally bent on mischief and regardless of social duty," he thirsted for blood. He then, as afterwards, had with him his pocket knife; angry, and personal altercation first, and then actual conflict between Redding

and his brother, was transpiring in his presence on his own account, he spoke not an offensive word, he struck no blow. The harshest interpretation that can be given to his actions, is, that it is doubtful, whether he would have assisted his brother, or separated the combatants.

In the affray at the Galt House, not a solitary witness proves that he offensively participated in the affair; there is no evidence that he did, or even offered to do violence to his assailants, unless you are disposed to credit the statements of Oldham. What credence should be given to the testimony of that faith-worthy conspirator; what reliance can be placed on the oath of that volunteer in the fight, your knowledge of human character and the discretion of the gentleman you have already witnessed, will enable you readily to determine. To Redding and company the Doctor gave not the slightest cause of offense; he knew none of them, except Redding; was a stranger, passing through Louisville from Mississippi to Bardstown, and was found, much like a "certain man on his way from Jerusalem to Jerico, who fell among thieves and robbers, who stript him, beat him, and leaving him for dead, departed." Upon his entrance into the public bar-room at the Galt House, he was suddenly, unarmed, struck down senseless. He had assaulted no man, provoked no one, insulted nobody, he had not even uttered a syllable. The enormity of getting hungry, and coming downstairs to supper, when supper was ready, is the only crime he is proved to have perpetrated. For this offense he was assailed, bruised until he was livid, and not only beaten there until he was senseless; but now here again is he struck dumb by being joined in these indictments. His power of utterance is suppressed, and his tongue torn out by the roots, that he may not divulge the foul deeds of that night. By a *ruse de guerre* it may well suit the prosecutor to stifle the utterance, and suppress the testimony of all of the adverse party. The accused are not permitted, by any of themselves, to give a narration of the matter; no one acquainted with all of them, was present to remember their words, watch their movements, feel their

danger, and now, detail the circumstances of necessity under which they acted. Redding and his party, the assailants then, the prosecutor and witnesses here, can, without contradiction, save from casual visiters at the house, or accidental lookers on, give what complexion they please to the cause. Why has Doctor Wilkinson, after his discharge, been included in these indictments? Why has his evidence been stifled—his power of utterance in behalf of his brother and Murdaugh choaked? It cannot be pretended that he even deserves to be tried. Why, then, not permit him to be heard as a witness? A vision from one of the adverse party might much *elucidate* the matter. He has been included in the indictments, because those of neither side present, were persons from all parts of the Union, itinerant, unknown, their attendance as witnesses doubtful, flurried by the suddenness of the affair, their testimony composed from want of acquaintance with the parties, the ignorance or indifference of lookers on—all these circumstances forbade a hope that the proper acts and parts could be assigned to the proper individuals. Doctor Wilkinson out of the way, the combined oaths of the conspirators, they hoped, would give color and cast to the case. The forms of law have been perverted to subserve the purposes of this prosecution by implicating the Doctor. Explanation from an opponent, or the possibility of contradiction, save from someone accidentally present being cut off, they hoped by concerted swearing to accomplish what they so signally failed to effect by their combined attack. The Doctor is now inculpated, not because he is guilty, but because it suits the purpose of the prosecution that he shall not be heard as a witness.

I will here, gentlemen, briefly advert to the law of homicide in self-defense, and its bearing upon the facts in the cause so far as Murdaugh is concerned.

"SEC. 14. And not only he who on an assault retreats to a wall, or some such streight beyond which he can go no further, before he kills the other, is judged, by the law, to act upon unavoidable necessity; but also he who being as-

saulted in such a manner, and such a place that he cannot go back, without manifestly endangering his life, kills the other without retreating." 1 Hawkins, p. c. p. 113.

The right of self-defense, as settled by the law, is, first, that rule of action that is instinctively implanted in the human breast by the wisdom of providence for our preservation; it is only so far modified by the benignity of the law, and enlightened reason, as to require, that, from "tenderness of shedding a brother's blood," the assailed party shall so far recede and avoid conflict as his personal safety, or the violence of the assault, will permit. The rule of the civil law, that "*qui cum aliter tueri se non possunt, damni culpam dederini innoxii sunt,*" is also the English common law, contained in the latter portion of that section of Blackstone's Commentaries read to you by the Attorney for the Commonwealth; the party assaulted must not factitiously, but really retreat so far as he conveniently can; or, "so far as the fierceness of the assault will permit him, for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or bodily harm; then, in his defense, he may kill his assailant instantly, and this is the doctrine of universal justice, as well as of municipal law. [4. B. c. p. 185.]

The same doctrine, that where the fierceness of the assault forbids, or no opportunity is afforded to retreat with safety to the assailed party, is the law as laid down by Hale [1 H. p. c. p. 482], and in the clear and lucid language of Mr. Justice Parker, of Massachusetts, in the case of the Commonwealth against Thos. O. Selfridge, "when the attack upon him [the assailed party] is so sudden, fierce, and violent, as that a retreat would not diminish, but increase his danger, he may instantly kill his adversary without retreating at all." (a)

If Murdaugh was attacked at such time and in such place, and so fiercely, that, to save his life, or protect himself from great bodily harm, it was necessary to slay his assailant, the law adjudges him only guilty of homicide, excusable, *se defendendo*. Where the necessity is unavoidable, urgent, im-

(a) See 2 American State Trials.

posed upon the party against his will, neither reason nor law, require him to do what his safety and personal security forbid he should attempt to do. The law being as I have laid it down, and as may be read from those works of unquestioned authority, I now ask you to collate and apply the facts touching Murdaugh's conduct, to the law so understood.

The scope of action, and the line of duty, as permitted and demarked by the principles of law to an assailed party, have not been transcended by him by color of and under pretext of the right of self-defense, in this instance, as I understand the testimony.

Murdaugh had no acquaintance with Meek, did not know him, had never before seen him; being a lodger at the Galt House, at the usual hour he came down from his room for supper. He came down with his coarse overcoat on, a serious incumbrance to a person about to engage in a combat; a garment of which anyone meditating battle would have divested himself. Murdaugh is a small and feeble man, had he expected danger to himself, or proposed a hostile collision with anyone, he would have been more efficiently armed. A pocket knife was the only weapon about his person. Had he deliberated an attack, he would certainly have divested himself of his heavy coat, and armed himself with pistols, or some more effective armor than a common pocket knife. The proprietor of the Galt House [Mr. Everett] informs you that the time of his coming to the bar-room, was in the evening about the time it is usual for the inmates of the house to assemble for supper. You are also told that it is customary, that about the time of, and just before supper is announced, the boarders, sojourners, and others, congregate in the bar-room adjoining the dining room. When others assembled, and were preparing for supper, Murdaugh also, encumbered with an overcoat, and almost unarmed, came into the public bar-room. The tavern, for the time being, was his house, and he was entitled to all the privileges thereof, so long as he demeaned himself with propriety, and paid charges. Which of the party commenced the conversation is settled by Redding himself, who,

although he recollects no concert or conspiracy, nevertheless informs you that the altercation, in words, commenced by his accosting Murdaugh, and saying, "you are the man that struck me," or, "you are the man that drew your bowie knife at my shop;" or words to that effect. To this charge against him, falsely made in allusion to what had transpired at the shop in the evening, Murdaugh emphatically responded that "the asserter (whoever he was) of such a charge, was a d—d liar." To be calumniated to your face, and falsely taxed with an offense (if offense there was), provoked just such an response as such a charge deserves from a free, fearless man. The affair at the shop would never in all probability have been revived, or even so much as alluded to by the defendants. Time had intervened for the passions to cool and for reason to interpose, but in an irritating maner the former quarrel is called up. When Murdaugh asseverated that he was not the individual who gave the blow or drew the bowie knife at the shop, Meeks, with the murder of whom he is especially charged, seized him, saying, "You are the d—d *little rascal.*" When the conversation commenced, Raily, Trabue and others tell you, the crowd commenced gathering around them; to many of those in the room they were partially obscured. This gathering around him by total strangers was simultaneous with the revival of the previous quarrel, his position near the counter of the bar-room prevented his receding. As they advanced, Graham and Trabue tell you, he warned them off, and that warning, earnest as it was, passed unheeded. Now surrounded, retreat impracticable, a former quarrel revived, his warning unheeded, his knife-hand uplifted, as a menacing signal not to advance, seized by an unknown arm with an oath of violence, what was he to do? Meeks in wanton drunkenness imagined and had avowed, "that he was bound to have a fight on that night." Oliver had in friendship taken him off, and by a sort of pious fraud had obtained his knife under the pretense of paring his nails with it. Yet, ill-fated and as if demented and doomed, he had returned, and at the same instant with laying violent hands on Murdaugh, Montgomery

and others inform you, he struck him with a whip or cow-skin, and other blows at the same instant were inflicted by others. What, I ask you, was he to do? Every man feels in his own bosom as testifying consciousness, that under such circumstances the right of defense would justify, the law of self-preservation would impel him to act as the laws of his nature prompt him, and the laws of the land justify him in acting. The vilest worm, that crawls on the earth, if trodden upon will turn against the heel that crushes it. The meekest and meanest of animals, when hunted down to death, in desperation will turn on its pursuers; it is an instinct of nature impressed on animal organization by an all-wise providence. Situated as Murdaugh was, to defend himself, was but to act in obedience to a law of his nature; above the control of human laws, implanted in the constitution of his nature for good purposes, the love of self-preservation would predominate if even forbidden by positive municipal regulations, when assailed, overpowered and beaten down almost to the very jaws of death; to strike for your life or security of your person, is an instinct inherent in your nature by the laws of heaven,—it is an involuntary, spontaneous effort of your animal organization—it is the inspiration of God Almighty himself, upon the human heart, to rebel and contend against destruction.

Impelled by extreme necessity, under great impending peril of life, Murdaugh did stab Meeks, and of that wound he died. Although the calamitous occurrence is to be regretted, who can doubt the necessity of the act? A left hand thrust, with a pocket knife, by a feeble and partially disabled man in defending his person against dangers, and himself from degradation, against a superior in strength, aided by numbers, caused the death of Meeks.

It, gentlemen, is unnecessary for me to recapitulate the testimony, or array the facts, to prove what is perfectly evident, that Meeks' death was the result of a necessity, that he causelessly, wantonly, and without provocation, imposed on a stranger, to him unknown, and who in deed or by words, had

never offered him injury. The manner of the attack—the weapon used by Meeks (peril and necessity apart), gave higher provocation than a brave man will tamely endure. Should Murdaugh, when stricken with a cowskin, have submitted? Should he have whined and begged as a negro slave, when lashed? Should the finger of scorn be pointed at him as a coward, disgraced by the whip? The jests of the rude, the taunts of the vulgar, would mark him for insult and mockery, had he not fought: the very girls, even at church and on gala days, would have pointed to him as the chivalrous young gentleman of the striped jacket, had he tamely submitted. There is not a man on that jury, who deserves the name of a man, that would passively submit to personal degradation by personal chastisement. The whelks of the cow-skin would bleed and blister, fret and forever fester upon his memory, long after all traces of the lash were cured on his back. The life of the aggressor could alone atone for the indignity.

As the accusation is more gravely urged against Judge Wilkinson than the other defendants, I will now advert to his conduct. Suits to obtain personal satisfaction for assaults and batteries they never committed, are pending against the Doctor and Murdaugh for the affair at the shop; an indictment is also pending against them for that violation of the public peace. This attempt to amerce the Doctor, and hold him pecuniarily responsible for an injury he never committed, is like to those indictments against him for the murder of men he never before in his dream had thought of, much less of violence towards them. This persecution is, perhaps, on the ground that he was the Judge's brother.—Murdaugh, too, shares in all this legal persecution; first, because he is in bad company, and, secondly, because *se defendendo*, he slew a man so vile, that the prosecution would discredit and render infamous the only man (Oliver) who seems *disposed* to recognize him as an acquaintance. The violation of the public peace at the shop, is an injury that another jury will pass upon, and by their verdict, avenge the insulted majesty of the law. Another jury will mete out to the prosecutor satisfaction for

the injury received on that occasion. You are now, gentlemen, called on in the name and on behalf of the Commonwealth, to convict Judge Wilkinson of the murder of John Rothwell, a worthier and less offending man in the affray than Meeks, as it is insisted, and because, however excusable the other defendants may be, the Judge at least, as the Commonwealth's Attorney contends, did not act in necessary self-defense.

In addition to the authorities already alluded to relative to the doctrine of self-defense, the following positions upon the law of homicide, are, I believe, sustained by reason, and deducible from the text and reasonings of standard authors. When a retreat would not diminish, but increase the danger of a person under the imperious necessity of exercising his right of self-defense, he may, without retreating, oppose force to force, and even pursue his adversary unto death, if his own preservation require it, and such killing is justifiable [see Fos. C. L. p. 273—1 Crim. Law. p. 80.] The right of self-defense is not confined to the party endangered—it is not only an individual, but a social right—it embraces the principal civil and natural relations; husband and wife, parent and child, master and child, not only may, but in duty, are bound to protect one another; and holds good between citizen and citizen in the spirit of the law, according to the reciprocal duties they owe one another. A servant, or any *other person*, when a felony is attempted, may interpose and justifiably slay the aggressor. A person in possession of a tavern room, although no injury be intended him, may, against burglars or incendiaries, oppose such force as may be requisite to prevent the felony. To protect against murder, robbery or enormous bodily harm servants of the party attacked, or inmates of the house about to be robbed, may justifiably take the life of the assailant or robber. [See Archbold, p. 121; Foster, p. 273-4.]

I quote, almost literally, from the best law writers—these cases are but examples to illustrate rules—the law is more palpably embodied and distinctly presented to the under-

standing, when exemplified by a case, than when presented as an abstract rule of action without reference to circumstances. Homicide is justifiable, or excusable, when committed upon compulsion, and *ex necessitate;* because the party does it not from choice as a free agent, but his action on the matter is constrained, his volition controlled by external circumstances—the concurrence of his will to the deed is absent —when there is no freedom of action, no *voluntary assent* of the mind, there is no moral, and should be no legal accountability. When it is practicable with safety, the law to eschew the shedding of blood, requires the party should retreat in cases of mutual conflict. But this requirement is only when he may be stationary or advance with as much propriety as it is consistent with his safety, and if his safety requires it, recede. How flight would have affected the Judge's personal security, is now a matter of pure speculation; if, for his own personal safety, he was constrained to act as he did, or if in the exercise of a social, not a selfish privilege and duty, he succoured his brother and Murdaugh, to preserve their lives or protect them from great bodily harm, he, in law, is excusable. Society and mutual companionship justify such interference, as is happily illustrated by the case of the three men walking in a field, and one is assailed, the others may interpose to prevent a felony being committed, and may interpose to any extent to make their interposition effective, as you have already learned from the case so aptly quoted by Col. Robertson. The reason of the law is this; the life of a citizen is, in its contemplation, dear, his person sacred. Against assaults, injury, or destruction, he may defend them to the last extremity, if the exigency of the occasion demands it, that right is not altogether personal to him, but it is a social right; and it is not only the right of any person to interfere to prevent the perpetration of a felony, but such interference to intercept the commission of a crime is enjoined as a positive duty.

The natural relationship between the Judge and his brother, the mutual ties of friendship between him and Murdaugh, his duty as a citizen, justified him in interfering in the conflict

to defend them. By the spirit of the law for the purpose of defense, he is indentified with them, their necessity and justification is his, their right of self-defense is transferred to him, or is rather common to all. If the Judge has not malignantly transcended the degree of violent interposition necessary to save his brother and friend's life, he has but fulfilled his duty as a citizen. I do not desire to be understood that officious meddling in broils is countenanced by law, nor do I mean to assume the position that where combatants are struggling in an affray to prevent mischief, or keep the peace, extreme violence is proper; no such licentious latitude of action is even permitted to those engaged in the conflict; I limit the right by the wholesome restrictions imposed on willful, wanton killing in other cases. Before I call your attention to the evidence, I will merely advert to another principle of law which is sound in doctrine and applicable to this case. In treating of justifiable homicide in the due advancement of public justice, and in allusion to what killing is justifiable for that purpose, the opinion is intimated as correct by the author. 1 Hawkins P. C. 107. "The killing of dangerous rioters by any private person who cannot otherwise suppress them or defend themselves from them (is lawful) in as much as every private person seems to be authorized by the law to arm himself for the purpose aforesaid." This doctrine seems so near akin to lawful killing in the execution of public justice by hanging, or in the arrest of felons who cannot be apprehended alive by those who pursue them, that I cannot question its correctness. The law to maintain itself and be respected must tolerate the means to suppress rebellious contempts of its authority, and such means should be proportioned to the exigency of the occasion and consistent with the safety of the orderly and law-abiding citizen. Rioters assembled in force like rebels against the government when they condemn the supremacy of the law and spurn its commands should be regarded as outlaws and traitors. The law surely cannot cherish any such suicidal and disorganizing principles as a favorable regard for those who have forfeited all claim to be within

the pale of its protection by their disrespect for its principles and the institutions of their country.

Without a labored analysis of the testimony, the prominent facts are few and substantially as I shall recall them to your minds. I have but little to say of the scuffle in the evening at the shop, the occurrence itself is quite impertinent to the matters now in issue as I conceive. The defendants were staying at the Galt House in Louisville. Judge Wilkinson was to be married in a few days at Bardstown in the interior of the state. Whilst in Louisville the wedding day being just at hand, it was thought by them that the operatives of one shop could not in time finish the necessary equipments in the way of dress. The Judge and Murdaugh applied to Davie, one of the witnesses, to make their clothes. Dr. Wilkinson engaged Redding to construct for him a coat to wear to his brother's wedding. Dr. Wilkinson to ensure promptness and satisfy any misgivings Mr. Redding might entertain of him, a stranger, deposited with him a one hundred dollar Mississippi note. The money was appreciating, the Doctor did not wish to lose the exchange in converting it into Kentucky money just at that time, nor did he desire to incur a possible suspicion on the part of Mr. Redding, that the garments would not be paid for. The Judge and Murdaugh obtained their clothes and went to Redding's shop with the Doctor, accompanying him as is usual with comrades in strange places. The fit of the Doctor's coat did not please him, alteration was suggested. The Doctor was for throwing the coat on Redding's hands as an article he was not bound to receive. Some chaffering took place. The hundred dollars was not surrendered, and that was the whole cause of the difficulty. Redding retained the money and insisted that the coat was, or could be, made to fit as such an article of dress ought. The Judge, who was in the room, gave his opinion of the coat. It is probable Redding was not apprised that he was a brother of the Doctor's; he spoke so harshly and insultingly that the Judge rose from the stove where he was sitting, and struck Redding with

the little iron rod used for stirring coal. The Judge may have been too hasty, but insulted by being told he was a meddling, busybody, or substantially that, as you no doubt recollect the testimony, did no more than almost anyone might be provoked to do. A scuffle ensued in which neither the Judge, nor Redding, nor anyone else, was hurt. The parties got from the shop into the street; were separated, *and departed, when?* Just as soon as Doctor Wilkinson got his money. Had the money been surrendered as it should, there would have been no difficulty. But for the occurrences happening since, the affair at the shop would have passed off, as it was in reality, a slight casual fracas not worthy of notice. The attempt to swell it into an important fight is ridiculous and the expression of my opinion about the $100 is the most aid I can give you in your deliberations upon that mass of immaterial testimony *from the shop and about the shop.* After the parties separated the Wilkinsons and Murdaugh go to their boarding houses, ashamed of what had happened I have no doubt, or rather not thinking of it at all in the preparations making for their trip to Bardstown. Not so with the other party in the quarrel. Menacing speeches and hostile movements characterize their deportment. In Redding's coffee house adjoining his shop, Meeks, Johnson and his friends are seen. The affray which had taken place is talked of and discoursed, and the proposals and propriety of going to the Galt House to give the Mississippians "hell" is mentioned. Warrants in blank against the defendants were offered Redding; those however he did not accept, to insert the names when ascertained. Redding, however, must go to the Galt House to procure the names. The *pacific* Johnson, Redding's legal adviser, had made the proposal to give them "hell." Upon this "steak cutter" immortal celebrity has been conferred by the roasting he has received at the hands of the gentleman (Mr. Prentiss) who preceded me. Meeks gets his knife ready, is under the persuasion—yes, a sort of religious obligation rests upon his conscience that he is bound to have a fight that night.

He seemed, however, to have loaned his knife, and gotten in its stead a cow-skin. Oldham who goes around for any chance is up in blood for a fight "on his own hook." At the ingathering, Rothwell, Redding's brother-in-law, and Holmes, congregate with others. The concert of action, the hostile intentions, the conspiracy to inflict grievous injury on the defendants, is so obvious from the testimony, and has been so clearly enforced and happily commented on by others (Col. Robertson and Mr. Prentiss) that I will not fatigue you with its repetition. When the combined forces had convened according to the plan of concert, allow me, gentlemen of the jury, to ask your marked attention to the manner of conducting the battle. Several hours had elapsed since the skirmish at the shop. The names had been obtained; Redding awaited it is said the coming of a peace officer to serve the process. The names when procured, like the rejected blank process, did not satisfy him—staying for the Marshal of the city or other peace officer at that place, an hour or more getting a memorandum of their names, are but flimsy afterthoughts to cloak another arrangement. Redding and his friends, picked men of herculean strength and statue, are *accidentally* in the bar-room about the time the boarders and lodgers at the house assembled to catch the news or be ready for supper. Judge Wilkinson, who I venture had scarcely thought of the battle of the shop, came into the public room alone. If Redding did not recognize the Judge, and if curious about his identity, why did he not address his inquiry to some third person? Why address himself to the man he had fought with only about four hours before? As if ignorant why insultingly inquire of him, "are you the gentleman that struck me in my shop?" The Judge very calmly and readily replied, "I am." This conversation thus commenced, and the torrent of vile abuse from Redding instantly following, I take it, was intended to provoke an assault from Judge Wilkinson. Had he resented by an attack the opprobrious epithets so lavishly bestowed upon him, Redding and company, as the assaulted party, would have shielded themselves under

it, as a legal justification to have inflicted upon him a most grievous battery. This finesse to bring on the fight failed, and Judge Wilkinson returned to his room. Great forbearance had been exercised by Judge Wilkinson. He claimed to be protected from insult and violence, and requested of the proprietor of the house (Mr. Everett) to furnish him with pistols at his room. No arms were brought to him and after remaining in his room about a quarter of an hour he again came down to the bar-room. In the diagram shown you to point out the localities of the house, you recollect in descending the stairs, just at the foot, there is a window overlooking the bar-room. Time for Redding to depart had intervened since the recent quarrel, and in passing the window by the stairway, if Judge Wilkinson had thought of it and passed into the public room, he would not have discovered Redding there. The witness, Raily, informs you that when Judge Wilkinson, at Everett's instance, returned to his room, Redding and some of his friends also left the public room and went into the entry or across the passage into the reading room. The Judge came into the room in company with the other defendants, or they were immediately in his rear. Up to this time no intimation had ever been given to the defendants that Meeks or Rothwell were enemies; Redding was the only one of the conspirators personally known to them. The existence of such conspiracy, they were as ignorant of as they were of the individuals who composed it. The Judge, it is true, was armed with a bowie knife, but Murdaugh and the Doctor were not equipped for fight. Redding again came into the room, he had been foiled in his effort to bring on a fight by the patient forbearance of the Judge. During the interval, the Judge was upstairs, it is more probable that Redding left the public room to rearrange his plan of attack than for any other purpose. Whether Judge Wilkinson's knowledge of the topography of the house would have enabled him to sneak to supper by the way back of the bar-room designated in the diagram we do not know. The premonition he had already received, would have induced a prudent man to arm himself; he came into

the bar-room the usual route to the supper table. His right to wear arms for his defense is as unquestionable as his privilege to come into the room. About the time of Redding's re-entry into the room, Mr. Pearson, just when Murdaugh was attacked and the remarks were made which I will presently attend to, accosted Judge Wilkinson, to whom he had been passingly introduced the previous summer, and told him it would be better to leave the room. This suggestion from Pearson he acceded to, and was about leaving when the quarrel and fight arrested his attention and checked his exit from the room. The admonition from Pearson and the testimony from the other witnesses are replete with proof, that however secret to the defendants, it was apparant to others they were to be attacked. The remarks made in their absence upstairs, the mysterious presence of unusual personages about the house—fighters all—but too clearly foretold the impending danger. At the shop Murdaugh had displayed hastiness of temper; he was young; with him a fight might be provoked; he would possibly answer their purpose. The Judge had been insulted but declined battle. Just before Murdaugh was angered by a provoking falsehood, as to his drawing his knife, etc., at the shop, Redding is heard to say, "these are the three men," or "here are the three men"; mark the words; they are of ominous import. To whom were they addressed? The words, "The one whom I shall kiss is he," did not more significantly mark the object of treason than Redding pointed out the defendants. When the conversation commenced, the conspirators at the signal, like Cæsar's assassins when the petition for the recall of Metellus from exile was presented to him in the senate chamber of Rome, gathered around the intended victim. The murmurs that in whisper had presaged the storm; the growling muttering broke into open violence. The onset is made upon Murdaugh in one part of the room as we have before stated. At the same instant the Doctor is stricken down. Proximity to Pearson, an esteemed citizen of Louisville, perhaps saved the Judge. About the time Murdaugh stabbed Meeks, from the testimony of General Chambers and

Montgomery, you cannot but be satisfied that Rothwell with his cane or bludgeon, was also inflicting violence on him, then reeling and almost bound to the floor by severe blows on the head. The severity of the blows is evident from the scars left, and Meeks could not and did not inflict them. At this crisis the Judge did inflict with his bowie knife a wound upon Rothwell in the side or back. Murdaugh, extricated, seems to have gotten from the room, and in that part of it where Holmes had the Doctor down prostrated and lifeless, Rothwell hard by, is again stabbed by the Judge. As soon as disengaged the defendants retreat to their room upstairs. When Rothwell received the second stab a futile attempt is made to show, and Johnson swears he was performing the office of pacificator. He was one of the conspirators, was present, engaged in the fight, had come to the Galt House for the purpose of abetting the lawless violence and it would be as miraculous if any such instantaneous revulsion of purpose seized him, as it is wonderful that no one present heard the pacific exclamation, "peace! for God's sake, peace!!" about the time of the second stab, except this redoubtable and veritable Billy Johnson. This sketch of fancy is no doubt of a piece with much of the testimony of the conspirators in relation to the matter. Pride of character, if any they have, tempts them to extenuate their conduct for their own exculpation. Chagrined by defeat, burning for vengeance, they testify with all the feelings a party could in his own cause. Their account of the occurrence should be discarded, because others present were disinterested lookers on, whose recollections are not warped by bitter prejudices. The testimony of persons not of the party, is every way less exceptionable, less suspicious, and more satisfactory. In scanning the testimony of various witnesses to the same occurrences, enlightened reason teaches the propriety of not rejecting what one testifies, because another did not see or hear the same thing. That you did not see, or, do not know what I have seen or what I know, is no reason even to doubt the detail of facts I may make. When within the range of human probability a credible witness at-

tests the existence of a fact, it outweighs the negative testimony of the whole world. What you know to be true is not the less so because others do not know it. Now, rejecting altogether the testimony of the conspirators, or in charity permitting it to prevail, when not contradicted by the unenlisted lookers on, the brief narration of the matter up to the stabbing of Rothwell is a succinct history of facts. To reconcile apparent clashings, or rather to fill up omissions in detail which may seem to occur, apply the rule just suggested, and you may well credit and reconcile all that those gentlemen have testified to. What Trabue saw may have escaped the observation of Graham or Raily, and so of others. The testimony of one cannot be impugned because another did not see or may not recollect what he sees. Of the wounds inflicted by the Judge, and a wound inflicted in the breast by an unknown hand, Rothwell died. By collaterial remarks foreign to the cause I am unwilling to detain you. The severity of the conflict is too well attested by the death of two, and wounds of others of the assailants. The peril of the conflict to the defendants is too well attested by the still visible marks of violence on their persons. The brutal and merciless beating inflicted on the Doctor, the attempt not only to chastise, but to take the life of Murdaugh, as manifested by the cuts with a deadly weapon through his hat; the assassin stab the Judge received when the combat was being declined, by returning to his room; a retreat itself by brave men, too clearly proves, that *enormous bodily harm* and impending hazard of life had placed the defendants in the attitude justifiable of self-defense. By the joinder of the defendants in the indictments, they are identified in the proceedings as one individual. If for the purpose of accusation, the crime of one is the crime of all, the right of defense should be deemed the right of all to defend. Are good citizens to stand by and let a lawless band of ruffian conspirators slaughter them one by one? Must each run as *far* as he can, and if overtaken *fight* if he can? The prosecuting Attorney, (Mr. Bullock) seems to insist that, unnecessarily, in their malice, Judge Wilkinson stabbed an unoffending man in

the back, and thereby caused his death. The nature of the offense is not affected by the part of the body the blow may happen fortuitously to alight upon. That the blows were inflicted maliciously, or even willingly, except so far as constrained assent of the mind constitutes such willingness, cannot be believed.

Suppose, gentlemen of the jury, any three of you were to go to the State of Mississippi, and land at Vicksburg or Natchez. Whilst temporarily at a tavern in one of those places, before proceeding to the interior on your business, you have a difficulty with citizens of the place and kill two of them. When the news reached your friends here in Kentucky, a thousand miles from the scene, would they not be willing to swear that necessity, and necessity alone, induced you to kill strangers you never before saw; men, too, with whom neither from business, nor acquaintance, you had ever before had intercourse? Judge Wilkinson, with his brother and friend, had come to Kentucky on an embassy of love. So near the consummation of his nuptials, he would not desire the comliness of his person nor the integrity of his attendants to be soiled by a fight. At such a time, distant, far distant from his thoughts, would be meditations upon bloodshed and murder. As a visitor to our State he was entitled to our hospitality. We do not, as the wandering Arabs of the desert, seize and prey upon the confiding traveler. Surely we are too civilized to regard all strangers as enemies, and like the piratical barbarians of Northern Europe in the dark ages, consider as lawful booty all who unfortunately or accidentally are cast upon our shores? To our State, as the abode of hospitality, Judge Wilkinson had come to contract the tenderest of human relations with one of the daughters of your land. A distinguished citizen of his own State, and known throughout the Union as a valued and honored citizen, a pacific man, at such a time, is it consistent with reason to believe that he would, but by constraint, have involved himself in so disagreeable a difficulty?

The language and the deportment of the Judge, his retiring,

the motives of action that would influence any man circumstanced as he was, evidences how studiously and consistently with self-respect he avoided a conflict. Now, permit me to ask you, when at last a fight was forced upon the defendants, what should Judge Wilkinson have done? Ought he to have stood calmly by, until at leisure they were all lynched or slain in detail? Should he, if practicable, have run until caught, and then have fought? No! No!! As a true man against them, lawless rioters, he had a right to defend his companion and brother. A mob arrayed in numbers, with force, were inflicting ignominious and grievous hurt upon his companion and friend. Men whom he had never wronged, unmerciful in their wanton riotousness, of superior brutal force, were mangling Murdaugh with bludgeons, and instruments of death were savagely playing about his person. The Doctor, his brother, whom he loved with a brother's heart, was overpowered, down-trodden. They were crushing the life from his body as he lay prostrate on the floor. Ought the Judge to have refrained from interfering? Who could refrain? Does reason or law require any such degree of high and impracticable philosophy as apathy and indifference under such circumstances? He that would not rescue a friend or brother never deserved the fidelity of the one or the affection of the other. Had the Doctor or Murdaugh been murdered and the Judge had not interfered, a voice of execration against his faithlessness and cowardice would have rung over the whole State that could only have been equaled by the deep-toned denunciation that would have resounded through the length of the land, if the mob, unharmed, had succeeded in their bloody and murderous purpose. The revolutionary and disorganizing proceedings of mobs in New York, in Mississippi and at other points in a few years past, have tarnished the fair character of our country. These lawless conspirators have imprinted on the escutcheon of our State the first foul blotch of lynchism. Contemners of the law, signally foiled by the resistance of their victims, in the name of the law they now ask you to perform an act of vengeance for them. Re-

buke them from this place; repudiate their claim to be avenged, through your instrumentality, on men whose lives they have attempted by violence, whose characters they have traduced, whose liberty they have infringed by incarceration in a common felon's jail, and whom they would now doom to felon's graves. By your verdict proclaim to the world that our State, in by-gone times known as the "dark and bloody ground," is now a land of civilization, where peace and good order in society are respected and the laws revered. Gentlemen, any inaccuracy of statement as to the evidence I have fallen into, your memories will correct. The further defense to be made by an older and abler advocate, will more than supply all omission on my part. As to myself, the fate of the defendants is in your hands. I thank you for your polite attention.

Mr. Hardin. I little expected when I engaged in this cause in Louisville last winter, that I should ever have to address *you* on the subject. Although I have been fifty years practicing at the Kentucky bar, this is the first time I have ever had to address a jury in this place, and I can not help feeling that I am as much a stranger here as any gentleman who has addressed you. I shall, however, in speaking to you, apply myself to an exposition of the facts and of the law bearing upon them, and whatever may be your feelings, you will, I am sure, keep in mind that you are bound to exercise your reason, and that you owe a duty of no ordinary responsibility to yourselves, your characters, and your country. That duty is a sacred trust reposed in you which you can not weigh lightly without injury to yourselves as well as wrong to others. Nor must you surrender up your reason to your passions and allow yourselves to be carried away by the shouts of applause from a fashionable audience, as if you were in a theater where a Junius Brutus Booth and a Miss Ellen Tree exhibit the practiced arts of controlling the feelings, and successfully eliciting the noisy plaudits of excitement. This is not a theater—this trial is not a farce—nor are you seated on those benches for amusement. This, gentlemen, is a solemn

court of justice—a solemn tribunal in which your Judge, presiding with becoming dignity, represents the majesty of the law, and in which you are expected to deliberate with becoming gravity upon circumstances of awful import. The appalling death of two fellow-creatures is the occasion of your being here assembled, and the guilt or innocence of those at whose hands they fell, is the object of your solemn investigation.

Even though I knew I should have to address a jury of strangers, and an assemblage to whom I am personally unknown, I little anticipated that I should have to make a speech to any other audience than that usually to be found in our halls of justice. But my friend Colonel Robertson, whose youth and warmth in that way, urge him to precedence, has taken me by surprise, and placed before me a gallery of beauty and fashion, which might well deprive me of my presence of mind, if I were not fortified with less of the ardor of youth in my veins than himself, and were I not less practiced in those graces of person and manners which he can so successfully play off to woo and win their fascinating smiles.

By law, and in conformity with the original institutions upon which all law is founded, this trial was to have taken place where the occasion of it occurred—in the county of Jefferson. The Legislature, in its wisdom, has thought fit to change the venue from Jefferson to Mercer county; but why, I am unable to say. For, even Colonel Robertson, the very able counsel for the defense, has admitted that, although for a time great excitement existed in Louisville, yet, after the investigation at the examining court, that excitement was altogether allayed. In this country experience has always taught us that when a change of venue is sought, the object is not to obtain justice, but to evade it. The object is to thwart and embarrass the prosecution, and multiply the chances of eluding the responsibility of the law.[18] How is this effected? Is it not by a removal to some place esteemed favorable to the

[18] It is not generally considered proper for counsel to animadvert upon the fact of the change of venue. The Judge will interpose to prevent such discussion, as irrelevant. Reporter.

accused, by a removal so distant from the scene of action, that the expense and inconvenience render it probable but few of the witnesses can attend; by a removal to where witnesses of a character dubious, if not infamous were known, may find credit because they are unknown? Here we are some seventy or eighty miles from the stage on which this tragedy was acted, yet we are asked why we did not bring the stick and the cow-hide, and Bill Holmes the pilot, as if we would be afraid to produce them were they within our reach. I would ask the opposite side, in my turn, why gentlemen have brought us eighty miles from the scene where we could have elicited the truth in every particular?

I listened yesterday with great pleasure to Colonel Robertson, whose speech was very good, and evinced as much of the fire of youth as the flowers of rhetoric; but I can not say it was much calculated to convince the understanding that the "worse can be made to appear the better cause." I also listened with great pleasure to Mr. Prentiss, who addressed you yesterday, and in part to-day, and I must say that, although there were in his speech some things which I could not approve, and many deductions which I could not admit, yet, on the whole, it was an oratorical effort which I could not help admiring. I am even disposed to go farther, and to say that I am utterly astonished that such forensic powers, and so ably wielded, did not prove less abortive—but I must attribute the feebleness of the effect, more to the weakness of the cause, than to the want of genius in the advocate. However, Mr. Prentiss really astonished me with one proposition he laid down with respect to the common law of this country, that every man is to judge for himself where the point of danger lies, that entitles him to disable another, or to kill him, lest he might, in turn, by possibility, become the killed; so that, in fact, if it were so, the point of danger never could be defined by law, because what brave man would consider no danger at all, a timid man would consider the point of danger bristling with a thousand deaths. Was there ever such a monstrous doctrine recognized by the laws of any community!

Mr. Prentiss. I only urged that what might be considered by a man, from apparent circumstances, the point of danger, where resistance was necessary for his own preservation, would in the law be grounds for justifiable homicide.

Mr. Hardin. I will come to that in due time. The dilemma can not be removed, that the same point, according to this doctrine, is, and is not, the point for the resistance contemplated by the law. No, gentlemen; the law recognizes no such absurdities. The law was laid down yesterday correctly by the District Attorney, that when the killing of a man has taken place, it is a murder in the eyes of the law, and must be pronounced by the law to be a murder, till the contrary is shown. What then becomes of this new doctrine, unknown to the law, that the slayer and not the law, is to judge and presume the justification? The law itself says, all killing of one man by another is murder. The slayer, according to Mr. Prentiss, says, "Oh, no, I killed my man because I fancied he would kill me—it is not murder, it is justifiable homicide!" Yet, the law again says, if a Sheriff, who hangs a man by lawful authority and in doing so commits only a justifiable homicide, should, even for the best of motives, instead of hanging the man, as bound to do, chop his head off with a sword, though death must necessarily follow either way, yet is he guilty of murder and liable to the punishment, for the killing contrary to the prescribed mode of his duty.

These three gentlemen now arraigned before you, are residents of the State of Mississippi, and they came to Kentucky early in December, for what, is of no import that I can see, although it is made to cut a conspicuous figure here as a favor conferred on Kentucky—a contemplated marriage at Bardstown. They arrived at the Galt House. Where Judge Wilkinson had his clothes made up, if he had any prepared for the occasion, is not shown. Where Mr. Murdaugh had his made, if any, is not shown. But it is shown that Dr. Wilkinson was to have clothes made at Mr. Redding's. They were made with great punctuality, and the Doctor came to Redding's store at the appointed time. He tried on the new coat and seemed

well pleased with it. So satisfied was he with the coat that he wore it on the spot, and left a $100 bank bill on account of payment, requesting Mr. Redding would hold over the bank bill, which was of a Mississippi bank bill, till some expected change for the better would take place in the rates of discount. Dr. Wilkinson then went away, wearing the coat, and desiring the other things to be sent to the Galt House. As I now come to where it will be necessary for me to mention the names of witnesses, I beg it to be understood that I do not mean to avail myself of the example set by the opposite side. I will not shelter myself behind my professional duty, to vilify an unfortunate witness, disarmed of his self-defense—unfortunate, because of his inability to make any reply in the same public court in which he is maligned. Younger gentlemen at the bar than I am, may indulge in the practice, and, perhaps, the rashness of youth and inexperience may excuse what wisdom and manliness could not justify. No character, however spotless—no reputation, however unstained before—can escape the sullying hand wantonly raised to tarnish it, where there is no immediate opportunity of wiping away that which corrodes while it damps the lustre.

When Dr. Wilkinson returned to Redding's store, accompanied by his brother and Mr. Murdaugh, some objection was made to the collar of the coat. It was no serious objection, we may suppose, for we hear from Mr. Prentiss himself, "the expectancy and rose of the fair State," that he, perhaps, would not have been quite so fastidious. Perhaps, some young fellow, like my friend, Colonel Robertson, "the glass of fashion, and the mould of form," might have been a little squeamish; but, for myself, every one knows I am not particular. I never should have knocked down a tailor with an iron poker because there was a shade of fashion lacking in the collar of my brother's coat. The whole thing, I admit, is a matter of taste, the poker included.

But there was, however, some objection to the fashion of the coat—and that objection was thought grave enough to enlist the triple wisdom of a dignified Judge of the land, an

eminent doctor of a distant State, and a sage member of the Mississippi bar. Yes, with this formidable array of judicial wisdom, pharmaceutic skill and legal research, these three gentlemen came to a little store in Louisville, to fight a poor tailor! And all about an unfashionable twist in the collar of a coat.

To be sure they came from the Eldorado of the South, with their thousands of bales of cotton condensed into their pockets. They were perfect magnets of attraction, for the secret of their loadstone lay wrapt up in their Mississippi bank notes. Hotel-keepers were bowing to them on all hands, tradesmen and store-keepers honored the pavement they trod, and as to tailors, I am ready to believe they became perfectly fascinated with them. Nay, I even make no doubt that the keepers of watering establishments and medical springs, submitted to the soft impeachment, and became devoted to their interests. It is the necessary consequence of the influence of cotton bales.

Here was this hard-working tailor, ever on the watch for good customers, bowing to them as assiduously, if not more assiduously, than the hotel-keepers, or spring doctors—taking back his coat, I have no doubt, with tears in his eyes; but is it reasonable to suppose that, fascinated as he was, by the ability of such customers to pay, he would be so blind to his own interests as to give unprovoked quarrel to such customers? However backward he may have been from prudence and circumstances, it seems there was no want of readiness to carry matters with a high hand on the part of those with whom he was dealing.

Judge Wilkinson is sitting on a stool at the stove, and when he sees his brother about to pay for the pantaloons and vest he interferes without being called upon to do so, and opposes the payment for these things, upon which the tailor very naturally asks him what business he has to interfere. The Judge, without telling him that he was the Doctor's brother, which Redding did not know, and that as such he had a right to advise him, jumps up, snatches an iron poker, with which a man could be knocked down as readily as with a crow-bar,

and for the small provocation of a tailor saying, "You make yourself a little too busy in the matter," ignorant that he was addressing a dignified Judge, the Judge aims a deadly blow at his head, which, if not fortunately worded off, might have involved consequences to which I must not advert. What does this prove? If it proves nothing else, does it not show plainly that Judge Wilkinson is not quite as mild and forbearing in his disposition as his friend, Mr. Prentiss, would have you to believe. Did Judge Wilkinson's conduct show that it was his belief men's passions should be subject to the control of law, if not of reason? that he was in principle a respecter of the law in this instance?

I know it will be argued that there is a wider latitude given to the restraints of law in the Southern than in the Northern States, and a false assumption is built upon this circumstance, that the free use of personal liberty to avenge private quarrels gives greater bravery to a people. But I have read, I have witnessed, and I believe that the people of New England, a section of this great republic, where you can get no man to fight duels, and where every man throws himself under the protection of law for the redress of his private wrongs, when they have been called into the field for the protection of their country, have shown the brightest examples in modern history of personal bravery and national valor. Show me where men have been more prompt to rush upon the bayonets of their country's invaders than the heroes of New England. Sir, courage and bravery belong to the respecters of the law which protects every man's rights in a civilized community. Climate, in a country of such vast extent as this, may have its influence on men, as it is known to have on the inferior race of animals. You may meet the lion, distinguished for his courage and his power, in the Barbary States, where conscious of his strength, you may pass him unmolested, if you are not the aggressor. As you descend to the more southerly latitudes, you meet the leopard and the panther, with whom treachery and ferocity are the substitutes for courage; and when you pass the equator you meet the hyena, the emblem of uncom-

promising cruelty, and without a redeeming quality. Men may in like manner be affected by climate; and he who on the iron-bound coast of the frozen North, or on the arid rocks of New Plymouth, would illustrate every noble virtue of his nature, not less distinguished for his piety than his patriotism, for his endurance than his courage, and for his generosity than his bravery, when transplanted to the enervating regions of the South may become different and degenerated, trusting more to his interests than his patriotism, to advantage than to courage, and to concealed weapons than to bravery.

But to resume my review of the evidence. Judge Wilkinson, so remarkable for his mildness and forbearance, as a sample of these qualities, aims a blow, as I have said before, at the tailor's head, which probably would have killed him had he not warded off the blow with his arm in a manner to give great offense to Mr. Prentiss, who can not see the propriety of a tailor grappling with a Judge to prevent a repetition of blows that might break his head. The little tailor, however, did grapple with the Judge, and, dragging him to the side door, he falls with his adversary out on the pavement. The tailor, though small, being strong and active, turned the Judge under, and as he did so Murdaugh hallooed out, "Kill the damned rascal," a command which the Doctor was about to obey, and when he was within a couple of inches of plunging his dirk into the tailor's heart, Mr. Redmond caught the Doctor's arm. But for that interference it would have been the last of Redding's career. Mr. Murdaugh had hallooed out to the Doctor, "Kill the damned rascal!" and in the next breath, "Part them! Part them!" This is easily accounted for. When he saw that Redding, by Redmond's interference, had gained the advantage, he perceived that the tables were turned, and fearful of the consequences became as impatient to have them parted as he had before been anxious to have the tailor killed. Well, they are parted; and when they get up, Dr. Wilkinson still has his knife drawn; Mr. Murdaugh has his knife drawn, and the Judge has his favorite weapon, the poker. The little tailor's courage, notwith-

standing this formidable array, is up, and he steps forth, a David before Goliah, and offers to fight the whole three of them if they will lay aside their weapons. This, I think, however, was a mere *brag* with the *poker-players,* for I do not believe he could have done it. Five witnesses swear that both Dr. Wilkinson and Mr. Murdaugh had out their knives. Several concur that Dr. Wilkinson re-entered the store with his knife drawn, demanding his $100 bank bill. All agree that he got it, and many agree that when he and his companions left for the Galt House, two went away exhibiting their knives, and one rejoicing in the poker. The knives, to be sure, have been identified as *white-handled knives.* Mr. Prentiss, in that able speech which you have all heard and admired, and which, it must be admitted, like a West India tornado, swept through this house carrying everything before it, even to the reason of many who heard it, seemed to think that we had some particular fancy for the handles of the knives, because they were white handles. He thought we dwelt uncommonly on the whiteness of the handles, till like spectres they were continually flitting before our visions. With all this poetical or forensic coloring we have nothing to do; we only identified them, and the gentleman has failed to contradict us by proving that they were black, green or red.

We have now, gentlemen, traced a small portion of this affair at the tailor's shop. In what occurred there immediately after what has been mentioned, we find the following facts established: Mr. Redding swears that he was advised to enforce the law against these gentlemen. The principal officer of police, the city marshal, is usually to be found about the Mayor's office or jail, from the peculiar nature of his duties. Mr. Redding proves that he and Johnson went toward the Mayor's office and looked for the marshal at Hyman's and Vacaro's coffee houses. Not finding him there, they went on to the Mayor's office. They applied at the Mayor's office to Mr. Pollard, Clerk of the City Court, and told him that one of the gentlemen was named Wilkinson, and that the names of the others they did not know. They

were told by Mr. Pollard that they should have the names; or, if they wished, they might have a blank warrant to be filled up with the names when ascertained. This Redding declined upon being told that if he could meet the Marshal he could arrest the parties without a warrant. Redding and Johnson proceeded to the jail in search of the Marshal. Not finding him there, Redding returns by Market street, at the corner of which he met Rothwell, near his residence. As he tells Rothwell, his brother-in-law, the nature of the affair, Rothwell goes along with him. And here I must remark, that to come down to Market street from the jail is the shortest way, though my friend, Colonel Robertson, thinks that a man may go round by Jefferson street a few hundred yards out of his road by way of a short cut. But Redding being but a plain man not given to sophisticated deductions, believes the nearest road is the shortest cut and took the shortest cut by Market street, where he met Rothwell, as I have said, and told him what had occurred. He did not ask his brother-in-law to go with him, but his brother-in-law did think proper to accompany him. There was no Bill Holmes—no Marshall Halbert—no Billy Johnson—no one but Rothwell accompanying Redding. Mr. Graham swears that there was no one with Redding but Rothwell, when he met them near the Galt House. Where was this terrible array of giants and Patagonians of which we have heard so much? Why, nowhere to be sure; the gentlemen have only drawn largely on their imagination. As Sheridan once said of Dundas, they are indebted to their imaginations for their facts, though I will not go so far as to say of my sprightly friend Colonel Robertson, or my brilliant friend Mr. Prentiss, that either is indebted to his memory for his wit.

Jackson swears, indeed, that he heard propositions made of going to the Galt House to give the Mississippians a beating; yet Graham swears Jackson would always lie a little. This Jackson, whom we have shown to be unworthy of credit, swears to that being a fact which is contradicted by Redding, by Johnson, and by Craig, whose credibility is un-

impeached and unimpeachable. But it seems Mr. Prentiss takes peculiar exceptions to Bill Johnson, because he uses strange figures of speech and low and outlandish tropes and metaphors. Well, the gentleman ought not to blame poor Johnson for imitating his betters in the arts and graces of oratory. I suppose he has been reading the newspapers in which the reported speeches of the most eminent members of Congress are recorded, and he finds one distinguished gentleman charges a party with being like a greasy pack of cards, all spotted and marked and shuffled together. Another young aspirant compares the Secretary of the Treasury, a dignitary old enough to be his father, to a she-bear, running through cane-breaks and dropping her cubs at every step; and yet Johnson is blamed for his figures, if he ever used them, of "hides full of shucks," and "skinning of sheep." I thought Mr. Prentiss, who so lately returned from Congress, would have admired Bill Johnson for being so apt a scholar, like that classic personage, Zip Coon, in picking up the new and approved style of tropes and metaphors now so fashionable in the places which he himself has made resound with the aptness of his illustrations.

Gentlemen, I had got to this place in the affair at the Galt House, where Redding and Rothwell were seen unaccompanied by any one entering that hotel. Mr. Redding says when he went into the bar-room he looked over the register and called for the names. Scarcely had he got them when Judge Wilkinson entered and stepped up to the counter to take a drink of water. Redding addressed him thus: "Sir, I believe you are the gentleman who struck me with the poker in my own house this evening." If Judge Wilkinson was sorry for his imprudence, why did he not then say it was in a hasty moment and upon reflection, he felt that he was wrong? Could Redding have resisted the ingenuousness of such an answer to his inquiry? Could he have harbored for a moment longer any irritation for an acknowledged injury? But what did Judge Wilkinson say or do? Why, he heaped insult upon injury by an aristocratic allusion to the tailor's

profession. "I will not," he replied, "fight or quarrel *with a man of your profession!*" Now, although I agree with Mr. Prentiss that there is nothing disgraceful in a profession, and I think the poet has expressed himself with scarcely less felicity than Mr. Prentiss on the subject:

> "Honor and shame from no conditions rise;
> Act well your part, there all the honor lies."

And as Burns says,

> "The heart's ai the part, ai
> That's right or wrang;"

yet, we can not help imbibing with our literature, and our sentiments many trifling prejudices from the mother country where aristocratic pretensions have too successfully attached disgraceful notions to certain pursuits of industry, and among these, the profession most sneered at by the would-be wits of the last century, is that of a tailor. And although a man of that profession here may justly feel that he is as respectable, and follows as respectable a calling as any other man, yet when he thinks those old sneers are leveled at him as an insult, he naturally resents it with the indignation of an honest and industrious and free citizen, not bound by a servility unknown to us, to succumb to him who dares to utter it.

There is, I fear, a principle growing up amongst us inimical to our republican institutions—a principle of classification favorable to aristocratic distinctions. We have our bankers, lawyers, and doctors, arrogating one rank in our society; the statesmen, heads of departments and officials, another. Our mechanics and those who toil by the sweat of their brow to produce our riches, are cast into the shade; and knowing, as they do, that such an attempt, however noiselessly it is made, still exists palpably, is it any wonder they should be sensitive to every whisper that is breathed to mark the invidious distinctions? An apparent unimportant word may wound deeper than rough language. Call a man a knave, and he may forget it; but call him a fool, and he never forgives you.

Call a young lady a coquette, and she may pardon you; but tell her she is ugly, and she will never abide you the longest day she lives. Tell a tailor he is a botch, and he may not even get angry with you; but sneer at him about his *goose* and his *profession,* and you insult him, though the words in themselves are harmless. It is the allusion to prejudices that have existed which carries the poison of insult in its barb. Sir, we must not disguise the fact that there is a line of demarkation drawn by the proud and arrogant between themselves and those who live by the sweat of their brow; between the comparatively idle, who live but to consume, and the industrious, who work but to produce, between the drones of the hive and the laboring bees. And to which, pray, is the country in its strength, prosperity and wealth, indebted for its teeming productiveness? To which for her energy, enterprise, protection, genuine patriotism and celerity in national or municipal times of danger? Go to Louisville when a portion of the city is enveloped in flames, and you will see a thousand mechanics rushing into the devouring element for the protection of property, while the lawyer and the Judge, and the haughty aristocrat walk about as spectators with their hands in their pockets. The mechanics compose the moving power and labor-working machine upon whose industry we all feed and fatten. Their labors are the wealth of the country, and when we cease to honor and cherish them, we poison the springs of our own invigorating prosperity, and cut off the sources of our own enjoyments. Do we treat them with gratitude when we taunt them with epithets, which they esteem derogatory or insulting? Are we to treat them thus in the halcyon days of peace, and when the thunder cloud of war gathers around our course, with a monstrous pusillanimity, fling ourselves into their arms as our only hope and rescue? Has not the history of our country shown, and will it not show again, that when the storm of invasion ravages our coasts, our safety is to be found alone in the strong sinew and ready arm of our laboring population? Where, then, are your bowie-knife-and-pistol gentry, your

duelists and your despisers of the man who lives by the sweat of his brow? Sir, they will be found cowering and lurking where they may snuff the battle afar off, and hide their once lofty heads in ignoble safety. But I will not consume your time with recitals which may be found in every page of our history. I shall return to the evidence in the case before you.

Mr. Everett is told by Mr. Sneed that there is likely to be some difficulty. Mr. Everett goes into the bar and by some indications to the Judge, meets him in the passage and takes him to his room where they find Dr. Wilkinson and Mr. Murdaugh. Judge Wilkinson relates to them what had happened. The Judge having made this relation, asks Everett to provide him with pistols. Why? For what did he want them? Was any one attacking them there or likely to do it? They were safe in their room. They could only want pistols for the purpose of descending and making the attack themselves. But Everett is asked to provide pistols. He said he would try, and with that avowed purpose, left them. He had not been gone fifteen minutes, in the opinion of some—in the opinion of others scarcely ten, when Judge Wilkinson, with this lower-country tooth-pick [taking up the bowie-knife], not trusting this time to the more merciful weapon with which he had been practicing, the tailor's poker; with this lower-country tooth-pick he started down prepared to use it. Did he know Rothwell? Did he know any but Redding? No man had accosted him but Redding. Why, then, did he come down with this terrible implement of murder? Why, sir, just exactly for this reason, that he had been mortified at the result of what happened at Redding's store. The Judge of the land had been turned over by a tailor. He had been bearded and abused by a tailor, and he provided himself with his bowie-knife and went down to have another deal with that tailor.

Mr. Prentiss seems to think the Judge had a right to go down to his supper. Why, so he had; but he had a right to wait for the bell to ring. He had no right to eat his supper

before it was served up—no right to take his bowie-knife down to the kitchen and terrify the cooks to allow him to devour the supper while it was cooking. And had the supper been ready, there were table-knives wherewith to carve his meat, and he had no right to carve it with a bowie-knife. But the supper was hardly cooking when he went down. The bell had to be rung over the private passage upstairs before it was rung below, and when rung below the folding doors had to be thrown open. But the bell had rung nowhere and Judge Wilkinson, Dr. Wilkinson and Mr. Murdaugh came down before any bells were rung; therefore it was not to supper they came down. Which table had Judge Wilkinson been in the habit of going to? the large table or the ladies' table? There is no proof that he and his companions boarded at the large table; and it is known that many gentlemen as familiar with the house as they had been, prefer the private or ladies' table. We have every reason to believe that was the table at which they boarded. The entrance to the room where that table is kept is not through the bar-room. One entrance to the large dining room, is, indeed, through the waiting room, and there is a bar in that waiting room, at which many gentlemen who are not pleaders, become suitors, make motions, and put in their pleas. I sometimes make my appearance at that bar, but I am not summoned by the attachment of the bottles. I go to hear the politics of the day —for, although I have long since quit the field, I can not be cured of the curiosity to know what wrangling is going on among the little juntas in every village as well as among the mighty ones of Congress.

When these three gentlemen got into the bar-room, Mr. Redding was at the counter; Mr. McGrath was inside of it; Mr. Reaugh was at the fire. Some say Mr. Redding came in immediately after the Judge. You must expect that out of twenty witnesses no two will agree in all the facts; but in a transaction like this, where several fights were going on—where in every corner a man was bleeding, or dying or suffering—that no two men could see everything or anything

alike, is to be expected. But, gentlemen, by collecting all the evidence together, contrasting, comparing, and justifying one by another, we can arrive at the facts of the case clearly and beyond the probability of doubt. We can arrive at them with as much certainty as we can at any other set of facts. And from this manner of collating the facts, I am enabled to present them to you without fear of contradiction.

One of these facts is that Judge Wilkinson walked across the bar-room, some twenty-five feet, when he came in. Mr. Trabue, a man whose evidence is to be depended upon, seems assured that when Judge Wilkinson came in, he walked three or four times across the room, and then stood awhile with his eye fixed upon Mr. Redding, his foot advanced, and his right hand behind in his coat pocket, and, I make no doubt, with his hand grasping the handle of this very bowie-knife. At that moment Mr. Murdaugh went up to Redding. I will not say, with one of their own witnesses, that in going up to him, he rattled like a viper; but as he went up he addressed Redding, saying, "I understand that you say I drew a bowie-knife on you in your shop this evening? If you say so you are a damned rascal, or liar!" And as he said so, he opened his knife and elevated it, as one said, or held it down, according to another. Yes, he accosted Redding in the most insulting terms and threw open his knife at the same time. Is there any witness who has said Redding accosted *him* in an angry manner? One person said of the knife—"Lord, how it gleamed in the candle-light!"

The most warlike nation the world ever saw, was Sparta. When the Spartans prepared for battle, they polished their arms to glisten in the sun. They washed their clothes clean, combed their long black hair, and sang the song of battle. I have no doubt, Mr. Murdaugh, if in the ranks, would have done the same. I make no doubt he would be the last to run. I make no doubt he would have been amongst the foremost to make his gleaming blade glisten in the sun. The highest evidence of a man's dexterity and intent to use his weapons, is the high polish he gives them, and the high state of preser-

vation in which he keeps them for use. Of Murdaugh's dexterity in the use of his knife in the work of death, we have unfortunately too much proof; of his disposition to use it, we have the evidence of the high order in which he kept it for use, even to that state of Spartan polish, which made it gleam in the candle-light, as the sword of the Spartan would glisten in the sun.

We are told Meeks was determined for a fight; yet Oliver, whose friendship for these gentlemen seems of the most ardent and disinterested kind, gives up to Meeks his knife, after having so easily obtained possession of it on the small pretense of picking his nails. He had been invited by Oliver to drink at a "saloon" opposite the Galt House. They dignify these establishments now-a-days by the high-sounding title of "saloons"; but when you enter one of them you find it the vilest groggery in the world. These dignified groggeries exist to a shameful extent in Louisville, and why? Because the politicians of Louisville are too busy with their unimportant bickerings, or too truckling to put them down. They are the strongholds of the voting interests of Louisville; and the truckling politicians, who are ready to sacrifice every principle for the triumph of party, court the coffee house keepers, and bend in supplication for their election to the inmates of the groggeries. Even the municipal government is either influenced by paltry mercenary motives in its avidity for the revenue of licenses, or it has not the nerve or public spirit to grapple with the monster. Talk of our constitution being the greatest, the purest, and the most efficient on the face of the earth! Yet, here is an evidence of its working in a duplicate government. The most destructive of vices, because the parent of most, is licensed, encouraged, fostered, pandered to, by politicians, and through their truckling by the very local government itself, as if the misery and debasement of the community were more the end and aim of their rule than the encouragement of virtue, industry, sobriety and rational enjoyment.

We learn that Meeks was unknown to many; a slender,

small, and weakly man, with a bit of a cow-hide, the lash of which some one says was knotted. From what we learn of this cow-hide, I verily believe it would take at least five hundred knocks of it to kill a man—and I doubt if he could be well killed, after all, even with five hundred knocks of it. Meeks, unfortunately for himself, stepped up to Murdaugh, and said, "Yes, you are the d—d little rascal who did it." In reply to this, the very first lunge Murdaugh made at him severed a vital artery and caused his instant death. I am no physician, and know not technically what effect the cutting of that artery may have; but I believe it to be as deadly as if the brains were blown out, or the heart pierced. A man stabbed through the heart no longer lives or breathes, but he may stand a minute. Meeks fell, and in attempting to resume his feet, as he leaned on a chair, pitched forward upon his face, and when examined, he was dead.

When did Rothwell strike Murdaugh? Not till Meeks was killed. Then, it is proven, Rothwell struck with a cane, and Murdaugh was beaten back, and at that instant the tide of battle rolled on to the right corner as you face the fire, and then Rothwell was seen losing his grip of the cane in his right hand, and he was seen endeavoring to resume his grasp of it. General Chambers thinks it was Dr. Wilkinson whom Rothwell was beating at in the right-hand corner, but every one else says it was Murdaugh, and it is of course evident the General is mistaken. Every one of the witnesses swears that Rothwell was engaged with Murdaugh in the right-hand corner, while Holmes was engaged with Dr. Wilkinson in the left-hand corner. Let us now consider the wounds received by Rothwell. Dr. McDowell says the puncture in Rothwell's chest might be made with this knife carried by Murdaugh. The skin by its elasticity might yield without having an orifice as large as the blade, afterward apparent.

Who gave Rothwell that wound? Why, Murdaugh, and nobody else. This accounts for Rothwell losing the grip of his stick or cane. The moment this knife penetrated his chest on the right side, that moment his arm became paralyzed,

and he could not hold his cane. He caught at it, but he did not use it after. Just then, Judge Wilkinson came up behind with his bowie-knife in his hand, and General Chambers says he saw him make a lunge at Rothwell and stab him in the back. If two men are engaged in a fight, one with a dirk-knife like this, and the other with a stick, in the name of God let another with such a bowie-knife as this stand off; but if he must interfere on behalf of him who has the deadly weapon, and against him who has not a deadly weapon, let him do the work of death, front to front—let him stab in the breast and not in the back. But, to come up behind and to stab *him* in the back, who is already overmatched by his opponent in point of weapons, evinces a disposition which I shall not trust myself to dwell upon or to portray. Ossian, speaking of Cairbar's treachery, says:—

"Cairbar shrinks before Oscar's sword! *he creeps in darkness behind a stone*—he lifts the spear *in secret*—he pierces my Oscar's side!"

By this time Dr. Wilkinson was down in the left-hand corner and Holmes over him. The fact is, Holmes was the only man that knocked the Doctor up against Trabue, though Halbert boasted of having done it. It was only a boast in Halbert, for I believe he goes over his foughten-fields more at the fireside than on the battle-ground. In the language of Dryden, speaking of Alexander:—

"The King grew vain;
Fought all his battles o'er again,
And thrice he routed all his foes, and thrice he slew the slain."

March 16.

Mr. Hardin. Gentlemen of the jury, I would endeavor to resume the few remarks on the evidence which I offered yesterday, as near the precise place where I left off as possible, if I did not know that in the present case such particularity is not so requisite as in the case cited by John Randolph, who once told of a man that was so precise that he could, if interrupted and called off in the middle of his dinner by the sound

of a horn, on resuming his seat some hours after upon resounding the horn, take up his dinner exactly at the identical bite where he had left off. I am not quite so particular, and shall probably recapitulate some of the evidence I have already gone over.

Yesterday evening I endeavored to give you the law and the facts of the case as nearly as possible, as far as I went. I shall now repeat that you are not to take as facts all that may be sworn in a cause. Although witnesses may be men of undoubted integrity and veracity, yet all they state are not facts. They are fallible beings, and likely to misconceive and misinterpret facts without any intention of doing so. We are to ascertain the facts from the mass of evidence, and judge of each witness's competency by contrasting his evidence with that of others, and when it agrees with all or the majority of witnesses, we may safely infer he is right. I endeavored yesterday to examine the facts that occurred at the tailor's shop, for the purpose of showing the ill blood fomented in these gentlemen's hearts against Redding. I then showed that they acted in concert, and provided themselves with what weapons they could, not being able to get all they wanted; and how, upon a small occasion, they were prepared to use these weapons. Indeed, there seems to be no witness as to what occurred when Judge Wilkinson remained in consultation with his companions in his bedroom.

If Judge Wilkinson, Dr. Wilkinson and Mr. Murdaugh were known to be frequenters of the bar before meal times, why has it not been proven by one of their witnesses? That not being proven, I have a right to assume that it could not be done, because it was not the fact.

Next I have to ask, why these gentlemen came into the bar-room provided with arms? Could it be with any other design than to run Redding out of the room? Were they going into a room where they commonly resorted? It is evident they were not. Did they go there on their way to supper? It is evident they did not, for supper was not near being ready.

What disposition for eating supper merely, does it show in Judge Wilkinson to pace the room three or four times and then fix the eye of destruction on Redding while his purpose kindles and he grasps his bowie-knife behind in his pocket? What more eagerness for supper does Murdaugh exhibit in going straight up to Redding, rattling like a viper and insulting him with being a liar? Sir, I care not if a man go into any crowd and before an angry word is used to him, he goes up to as meek a man as Job himself, and says to him, "You are a damned liar or rascal," and flings open his blade to inflict mortal injury, as his words indicate, if the person so accosted strike his insulter, it is not surely any great wonder. And yet Redding did not strike a blow. Mr. Murdaugh may say, "I kept within what I thought was the safe side of the law—I approached with my drawn knife—insulted the person to draw on the attack from him, that I might have some excuse for using my knife in the manner in which I came to use it at any rate." If any man come up and call you a damned liar, or a rascal, and spring open his knife in the attitude of striking, should you strike or slay such an assailant, would you not be excusable? But Col. Robertson attributes to an act of this kind nothing but a manifestation of innocence and high spirit. The Colonel is really a gallant man, and judges of others by the fire and chivalry raging in his own breast. You must not laugh, gentlemen, for if you could look upon the volcanic mountain, though you would see its head capped with snow, you would find its bosom like *his,* rumbling with fire, smoke, and brimstone. In former times, the highest honor known to a Roman soldier was to have saved a man in battle, but here it is argued that if a young aspirant to fame pinks and kills his man, he is to be sent home to his parents in honor, crowned with the chaplets of victory. Nay, it is believed, if Bonaparte in his youthful prime, in his Italian campaigns, had had Murdaugh by his side he would have confided to his ready and unerring arm the *execution* of many a hardy adventure. Col. Robertson may say what he pleases, but I say it was Murdaugh commenced the assault, and that

all fighting done by him was in the wrong. All fighting done on his account was in the wrong, because he had commenced in the wrong.

Well, gentlemen, as I remarked to you yesterday, when I stopped, for I am now returned once more to that point, Murdaugh had given the first provocation, had killed his man, had stabbed another to the death, when Judge Wilkinson stepped up and gave Rothwell a stab in the back, while engaged with and probably receiving the stab in his chest from Murdaugh. Yes, gentlemen, a third man comes up and lunges this beautiful little weapon into Rothwell's side, and starts back! Sir, if men are engaged with deadly weapons, part them if you can; but do not come up behind them and lunge a bowie-knife into the vitals of one, and then come into a public court and demand of a jury not only to acquit you but to do it with shouts of, "Glory, glory, go, go!" And yet, gentlemen, this is the polite invitation given to you by Mr. Prentiss, to acquit such a man with acclamation. When engaged with a man who has only a cane no bigger than his thumb, his opponent gives that man a deadly stab in the chest which paralyzes his arm—a third person, Judge Wilkinson for instance, comes up *behind* and stabs the paralyzed man *in the back*, it is, no doubt, high time for you to be called upon to mark your approval of the deed by shouts of acclamation. Mr. Prentiss by way of winning your favor with complimentary allusions, thinks Kentucky should no longer be called the "bloody ground," because the river Raisin has carried off the palm in feats of human butchery. But I think the Mississippi gentlemen, of Vicksburg, have bidden fair of late to obtain for that part of Louisiana opposite their city, the palm of being the "dark and bloody ground." I suppose in the far-famed Menifee duel with rifles, if some one had stepped up and lunged a bowie-knife into the vitals of one of the combatants, the shouts of acclamation that would have arisen in that quarter of the world would have resounded to the uttermost ends of the earth.

Dr. Wilkinson, by this time, became engaged with Holmes.

Holmes is a stout and large man; but his size has been greatly exaggerated. Like the Patagonians, the first discoverers thought them ten feet in height; the next voyagers only eight, and the next but six. I recollect reading of Captain Smith, that when he first explored the interior of this country, on his return he represented the inhabitants as all Goliahs, six cubits and a span in height. Yet, subsequently, more matter-of-fact men found they were only miserable and cowering Indians of ordinary dimensions. In this manner appearances are magnified.

We are asked why Holmes is not here? We echo to the other side, "Why Holmes is not here?" Our answer is, because he was not to be had, being a pilot down the river and not within the control of the State's Attorney or any process issuing from him.

Sir, among other appeals made to you for acquitting them, you are told, as a set-off, that there is no state in the Union on which you are more dependent than that of Mississippi. They take their cotton South and receive either through shipping agents, or drafts direct, their money for it from the merchants of Great Britain. True, Kentucky gets some of these dollars from the Mississippians for what they think better than their money, or produce, or they would not buy it. We, in the rounds of trade, pay these dollars, or what represents them, to the Liverpool merchants for merchandise that we think better than the money. The Liverpool merchants in the next turn of the wheel, pay the same dollars back to the Mississippians for their raw cotton, and the Mississippians are nothing loth to take our produce again for the same dollars. And after several twists of this kind, when we get them back and recognize one of them as an old acquaintance, we may say, "How do you do, friend dollar, I am very glad to see the face of an old acquaintance; step into my pocket and warm yourself; I always give shelter to a traveling friend." We are proverbially a hospitable people, and never refuse a night's lodging to a dollar, or its liberty to travel further next day upon leaving us an equivalent for what we lent it.

But to be serious, are we not all dependent on each other? I know this, and can not admit that we owe more to Mississippi than Mississippi owes to Kentucky; and why there should in this case be made any parade about our indebtedness to that State, not founded in reality, is for you, gentlemen, to weigh.

To resume the facts of this case; what does Judge Wilkinson do? He stabs Holmes in the arm; but he is not indicted for that. He stabs Rothwell when he is engaged with Murdaugh in the right-hand corner; and again, when in the left-hand corner, standing over Holmes, and trying to get him off his own brother. Rothwell had been disabled by two stabs.—Judge Wilkinson, standing at the dining room door, when Rothwell was saying nothing, except in mercy trying to persuade Holmes to spare Doctor Wilkinson, comes across the room to the opposite door, finds Rothwell's back turned to him, and then makes the last, the second thrust of his bowie-knife into his victim's back. Robert Pope says, I saw Rothwell's back to Judge Wilkinson, when the Judge stabbed him—up to the very handle. I ask you, gentlemen, I speak to you not in language other than the broad and naked truth—is there any witness denies this? Every one who knows Robert Pope, knows that he would not state what he did not know to be the fact. We know that each and all of these wounds contributed to Rothwell's death. The last stab is given by Judge Wilkinson to Rothwell; Doctor Wilkinson and Murdaugh retreat out into the passage, and fight their way to the foot of the stairs. I care not what was done there, it was done after the offence previously committed. Suppose Oldham had shot one of them, and not missed as he did; suppose Murdaugh had been knocked down; and suppose Judge Wilkinson received blows in the passage, does it lighten the offence previously committed? I care not what took place, when a man has killed another. When making his escape, I care not how many guns are fired at him, how many rocks thrown, because it alters not his previous offence.

If there is any evidence that anyone in the bar-room laid a hand on Judge Wilkinson, who has proved it? Is it not

plain, that any bruises or injuries he did receive, were received in the passage.

Mr. Prentiss said he was willing to stack arms with the Kentuckians. What arms had they? They had a cow-hide whip! We hear of a cane, which he thinks may be conjured into a sword cane. Mr. Holmes, indeed, had his fists, but he could not stack them.

We are told that Oldham had arms by a witness who viewed the scene from the outside of a window, like one of the venerable birds perched on a dry limb eyeing the slaughter with a prospective instinct—one of those remarkable birds, renowned alike for their gravity and great stillness. We have heard a good deal said, and well said, if true, about Oldham. That he was unsteady—that he cast his eye to his counsel for relief. Yet we really saw nothing in his conduct to warrant his being called perjurer, scoundrel, coward and rascal; and here I must remark that this very talented young gentleman, Mr. Prentiss, in using such epithets to a witness without even a shadow of justness in the application, warranted me in saying that though I admired some passages in his speech, yet others I should feel bound to denounce as unworthy alike of his profession and of his character.

No man in this State can boast a prouder ancestry than that very Oldham, whom it has been attempted to brand as odious and infamous. They have been among the earliest settlers and most esteemed of our citizens—trusted with command in our army, and venerated on the judicial bench. And has a man sprung from such an honored stock no pride in upholding his name—no feeling to rouse his indignation when epithets, as gross as they are groundless, are poured out to tarnish his reputation for the paltry purpose of influencing a jury to discredit his testimony, and to warp their judgments from the straightforward path of truth and justice?

What proof has Mr. Prentiss to sustain the course he has taken? Sir, there is not a shade of proof. The gentleman is indebted to the fertility of his fancy, and his best friends must regret that he has not, in this instance, cultivated that pro-

ductive soil for some more praiseworthy object than an ignoble and disgraceful crop of baneful, destructive and loathsome weeds. Does the gentleman think he is one of the angels appointed to pour out the vials of wrath? Has he not indulged in pouring out gratuitously his vials of wrath on Mr. Redding, who could not escape? Redding is stigmatized as a murderer, to be haunted by the ghosts of the slain at his nightly couch. Yet what was his offense? He raised his arm to ward off the blow of an iron poker aimed at him by Judge Wilkinson. He had profaned a Judge's person on this trifling provocation by seizing him, dragging him to the door, and turning him under! "Oh! you scoundrel," would Mr. Prentiss exclaim, "why did you do that?" He had retorted upon Judge Wilkinson when taunted by him about his profession; and, worse than all, he did not, when the killing was going on, stay in some convenient place to be killed. "Why did you not, you coward, rascal, murderer, perjurer, and so forth, *turn your back* to be stabbed *with safety?* Why did you not stand up with your face to the breeze when the sirocco swept along, carrying death on its pinions? Why did you fall on your face, and let the pestilential blast pass over you? Why did you not breathe till it was gone? You, and your friends, have offended us by your want of submission, and now you aggravate your offense by coming here to testify against us."

Really, it is astonishing they are yet alive! But it will be more astonishing, perhaps, when it is told that they will return to Louisville, and there stand, in point of reputation, just as they stood before these slanders were concocted, digested, and spewed upon them. It will turn out that they are yet unpolluted and unscathed. The same protecting Providence which carried the Israelites through the Red Sea will protect even these persecuted and wronged few.

Gentlemen, I have endeavored to trace facts as far as I have gone, with minuteness, and having presented these facts to you, it is for you to determine whether they do not establish these conclusions. When the fight occurred in the bar-room, it was brought on by these gentlemen intentionally: if they

brought it on, did they fight in their own defence, or because they had drawn the conflict on themselves: could Meeks have inflicted death with a cow-hide, or Rothwell with a walking stick, so as to render the killing of them necessary or justifiable according to the true spirit of the law?

But here there is a proposition of law advanced by Mr. Prentiss, which I must combat. He says the law recognises that the point of resistance unto death, begins where a man himself believes the point of danger ought to be fixed. Then we have no law at all—we may burn up our law books—this revokes all that they contain on the subject of homicide. There are two men engaged in a quarrel; one as brave as Cæsar—the other as timid as a hare; one kills the other, when the quarrel has arrived at a certain point. The brave man, if he were a Marshal Ney in courage, is to be hanged, because he had no fear of his life when he killed his adversary. If the timid man is the survivor, he is to be acquitted with acclamation, because of his cowardice, which made him imagine danger where there was none.—Thus cowardice and rashness are to be rewarded and cherished, and bravery and forbearance punished with an ignominious death. Is it possible, you, an intelligent jury, can be imposed upon by such sophistry? Is there so low an estimate of your understandings as to suppose it?

I knew what I should have to combat the moment I saw the hack driving into town with a head peeping out of the window, which head I knew belonged to the shoulders of a certain gentleman from Mississippi. When I was in Vicksburg, I asked a gentleman how it was that Mr. Prentiss defended so successfully so many notorious murderers, who really merited the gallows? "Oh," said he, "he has hit upon a principle which he calls law, that charms every jury to which it it is addressed." I asked the gentleman to repeat the magic words to me. He did so. It was the very principle I have been combating. It is possible that as the gentleman afflicted with this chronic principle, which he belches up with so much advantage to himself and relief to others, is now in the neigh-

borhood of Medical Springs, esteemed so potent by Mississippians, he may resuscitate by a few drinks of the charming water, a sophism which I have shown to be no longer tenable by any one who values what is healthy and sound, above that which is merely delusive. Sir, the principle of self-defense does not warrant a man in killing under the name of self-defense, if he is himself in fault by being the aggressor.

Is the principle of self-defense among nations to be carried into effect as justly applicable to the right of self-defense among individuals? In national controversy, the law of nations, an imaginary code of mutual convenience, is referred to, according to the custom of the country, but in a conflict between individuals, there is a defined law, which must be the redresser. A nation with right and justice on her side, may be conquered by another nation in the wrong, and can not sue for or obtain redress from the wrong-doer; but an individual, in a community, may be wronged by another, and can obtain redress, because he has the law common to both, and a superior power to appeal to. Therefore, there can be no dependent analogy between the laws of nations, and the laws of individual communities. There was some crude idea thrown out yesterday that the laws of Great Britain ought not to be enforced here. We are not to be told at this day that we have any other common law than that derived from the common law of England. The very principles of our statutory laws are dictated by the genius of English common and statutory law, with the exception of such local differences as require local application of principles. If the gentleman could take from us the right to apply the law of England where it would be in point for us, we could by reciprocity, deprive them of any they might most rely upon.

I shall now advert to the peculiar necessity enforced upon us of becoming a law-abiding people, if we preserve any regard for our present form of government and constitution. In empires, monarchies, and kingly governments, armies are formed to keep the people in order; but in a republic, what could preserve the social compact, but the law? The moment

you dissolve or dispense with the law, that moment you dissolve all national constitution. Every government, and most especially a republican government, is bound to protect each citizen in his property, reputation and life. How can a republican government do it, but by and through the law rigidly and justly administered? Whenever you dispense with the law, you allow men to arm themselves, and to become their own avengers, independent of, and above all law. When they are not only permitted to do so, but to return home as innocent men, what is the effect? Every man will arm himself, and like the turbulent and licensed armed mobs at the fall of the Roman Republic, brutal violence will reign instead of law; all government will be dissolved, and anarchy and confusion will pave the way to usurpation and tyranny. You must venerate the law, if you would not see such a state of things. If you do not, A and B will arm themselves, like the Turk, up to the throat, and kill whom they please out of mere wantonness and sport.

If you go into the Northern States, it is a rare thing if you can find a man in ten thousand with a deadly weapon on his person. Go into other States that shall be nameless, and you will hear of them as often as of corn-shuckings in an Indian Summer. Go further South—to Arkansas or Mississippi, for instance, and though you would be a peaceable man, shuddering at the name of a "tooth-pick" in the North, in these States you may arm yourself to the teeth, and track your steps in blood with impunity. Why is this, but from the relaxation of the laws that are elsewhere enforced and obeyed.

I was down the river lately, and it was pointed out to me where the *Black Hawk* had blown up and killed her scores; to another place where the *General Brown* had blown up and killed her hundreds; to one spot on the shore where two gentlemen blew each other's brains out with rifles; to another, where the widow somebody's overseer was butchered; to another, where the keeper of a wood-yard was shot for asking pay for his wood; to another, where an aged gentleman had his guts ripped out for protecting his slave from cruel treatment.

"Great God!" cried I, at last, "take me back! take me back to where there is more law though less money"—for I could not stand the horrid recital any longer—when every jutting point or retiring bend bore the landmark of assassination, and irresponsible murder.

Why does the law call for punishment? Surely it is not in vengeance for the past, but to deter others from the too frequent and free use of deadly weapons, whether in Kentucky, Louisiana, Mississippi or Arkansas. Is it to be left to the vitiated taste of the brutal few to give tone to the mind of a community in setting up the code of the bowie-knife against the common law? It was but the other day that in the Legislature of Arkansas, a member on the floor was a little disorderly, and the speaker, to keep quietness, stepped down, brandishing his bowie-knife, to silence the ardor of the unruly member, which he did, effectually; for, of all the ways in the world of putting down a young and aspiring politician, whose tongue will keep wagging in spite of his teeth, your bowie-knife is, I admit, the most effectual. And the speaker, on this occasion, bent upon having silence, silenced the offender, not only then, but for all time to come. To be sure, he went through the form of a court of inquiry, but a life is only a small matter there, and he was acquitted according to the laws of that State.

Coming events cast their shadows before, and here we have one symptom of that downfall of our own glorious Republic, which has been so often predicted, but which has been reserved for the present generation to consummate. The symptom is to be found in the flash of those deadly weapons carried about and used with such unerring fatality by our legislative sages and judicial dignitaries. As if the next should come from high places, too, we have a fatal symptom of our downfall furnished by the corruption of those in office, who share in or connive at the grossest defalcation—the widest system of public plunder, even in our monetary defalcations, ever known in any government.

Why should we deceive ourselves with the vain hope that

our Republic will boast greater permanency than that of Rome, when we are fast falling into the very track, step by step, which leads to the precipice over which she plunged headlong. That once magnificent mistress of the world marched up the hill of fame and glory with irresistible strides, till she reached the summit and looked around upon the hundred nations in her rule. But, at last, satiated with prosperity, she began to repose supinely upon her laurels, and she permitted herself gradually to relax that discipline and good order, which had been to her not only her shield and buckler, but her bond of union. The people were permitted to fight in twos and threes at first with impunity. They became accustomed to it, and then fought without interruption in gangs; by and by, mobs fought with mobs; and finally the whole people became arrayed against each other in regular armies, till they had to retire to the plains of Pharsalia, where the doom of the greatest republic the world had ever known was sealed forever.

Are we not relaxing the laws—which leads to anarchy, and from personal violence to popular usurpation? Are we not relaxing our financial vigilance,—which leads to corruption at the fountain head, and from private peculation to public defalcation? Is there no symptom in all this of a great crisis? I tell you again and again, when you can lay your hands on great delinquents, make *them* an example; when you can grasp great defaulters, punish them; then will you more easily check pernicious discords, and restore to its proper tension and tone the harmonizing power of your laws and your government. Whenever you see men wearing bowie-knives and daggers—hunt them down as you would bears and their cubs, from whom you can expect nothing but injury. The whole State of Kentucky looks to you this day for justice, for this is an awful investigation concerning the loss of two of her citizens. Two of our fellow-citizens have been murdered, and these gentlemen are here to answer for it. Some of the best blood of the country has been spilled as if in the pen of slaughtered hogs; but because the relatives of one of these butchered men employ counsel to aid the prosecution in developing the truth, and

guarding against the delusions of sophistry from the greatest array of talent the country can boast, or that wealth unbounded can procure, to elude the punishment due to the offended laws, you are told to take but a one-sided view of the evidence, and to decide at any rate against the paid advocate. I have not asked these gentlemen what they are to be paid for eluding justice, because I did not consider that a sort of evidence which ought to influence your verdict.

Gentlemen, one question is, are we to tolerate this bowie-knife system under the false pretense of self-defense? I say, let your verdict act like the ax laid to the root of the tree, and many a prayer will bless you for your timely check of its growth. Many a woman is made a mourning widow, many a child made a pitiable orphan, and many a father childless by the use of this accursed weapon. You have it in your power to prevent the recurrence of such scenes.

We have had an exhibition here in miniature of those Roman scenes which prepared the public mind for the downfall of that great people. There was a vast amphitheater where the Roman people could be crowded together, and in the presence of some hundred thousand persons of both sexes, a man would be brought into the arena, and a ferocious tiger turned in upon him. He might, or he might not, possess skill or courage to meet the formidable beast and evade the deadly spring; but, if not so fortunate, when the tearing of his vitals was seen, and the craunching of his bones heard, the solitary shriek of the victim's wife, as it arose upon the air, would instantly be drowned by the acclamations and thunders of applause bestowed upon the ferocious beast, prolonged by its renewed efforts to suck the blood, tear the flesh, and grind the bones of its prey. As *we* have no amphitheater, a hall of justice is made to answer for a miniature arena; and as we can not have tigers, nor men who will submit to be their victims, we have forensic gladiators, and witnesses whose private feelings and characters may be wounded, lacerated, and tortured to the infinite delight and encouraging shouts and plaudits of a fashionable auditory, while the victim is helpless and gloomy

in his unmerited prostration. Yes, it is all for the amusement of enlightened minds, and it is intended, perhaps, for the edification of the rising generation. But, I protest, I can not yet perceive that it is any more for the honor of the applauders, than it is necessary for the good of the country, that these gentlemen should be honored and glorified for their dexterity in the use of the bowie-knife and dirk. In the time of public danger, or foreign invasion, is it these bowie-knife gentry, these pistol men in private life, that mount the breach and face the danger? Are they the brother Jonathans that face John Bull and eye him and his scarlet coats with defiance? Where are they then? Why, like the gnats and mosquitoes, who glisten in the sunshine and the calm, but when the storm rages, and the thunder growls, and the lightning flashes, and the earth is rocked to its center, they are stowed away from the danger; though they are sure to emerge from their hiding-place to annoy with their stings when the succeeding calm and sunshine invite them out once more. Brave men may be voluptuous and effeminate in private life, but in the hour of danger, they put on a new nature. But these fighters in time of peace, clothe themselves in the skin of the lamb in time of war. Sardanapalus, who sat all the while with his women and eunuchs in times of peace, spinning and knitting, and telling long stories no doubt, and sometimes wearing petticoats to make himself more effeminate, when conspired against by Belesis and Arsaces, gave up his voluptuousness, and at the head of his army gained three renowned battles; and though beaten and besieged at last in the city of Ninus, to disappoint his enemies, burned himself, his eunuchs and his concubines, with his palace and all his treasures. Alexander the Great, who was kind, courteous, familiar, and confiding with his officers in private life, when leading the Macedonians, moved to battle like a pillar of fire, irresistible in his might. When the great Frederick led on his brave Prussians, they fought and fell and fought and fell, as long as any were left. And thus men imbibe the spirit of their chief. If led by a brave man, they are brave; if led by a coward, they are poltroons,

and if led by the bowie-knife-and-pistol gentry, I make no doubt they would be either assassins, or nothing better than mosquitoes, to be dispersed by the very first report of the cannon. Even at home, in our own rural districts, we see the influence of leading men on whole neighborhoods. Let a virtuous and enlightened man, whom all will look up to as a pattern, settle in your neighborhood, and every one will partake of his good influence. Why was it that Nelson, in his death, did more for the glory of his country than ever he did in his life? Because he ascended to heaven in the arms of victory, like Elijah, who tasted not of death. Let us never dream of selecting for our leaders or our examples, those who have so little moral courage as to trust to bowie-knives and pistols for the preservation of their manhood, instead of to their blameless conduct in peace and bravery in war.

Gentlemen, I beg of you in the name of Him who sits upon the cloud and rides upon the storm, mete out the measure of justice to these men, and vindicate the honor of Mercer county. But do not stigmatise your county by doing, as Mr. Prentiss would have you to do, by shouting "Glory! glory! go, ye righteous; go to your homes, in honor and in innocence." Whatever you may do, I shall content myself with the conviction that in my professional capacity, I, at least, have done my duty. I have been deputed by the widowed mother of the murdered Rothwell, and at the instance of his mourning sisters, to implore your justice. I have closed my mission. Between you and your country—between you and your God, I leave their cause.

Mr. Rowan. I solicit your already jaded patience, I will not say for a short time, for I know not how long it may employ me to make the appropriate comments upon the facts, the law, and the arguments of counsel in this case. I will promise you, however, not to be unnecessarily tedious. I have, in the patience and attention you have already displayed, a pledge that you will bear with me for at least a moderate length of time. My unfortunate clients (confiding alike in their own conscious innocence and your intelligence and unbiased state

of feeling) were willing that you might have decided their case without argument, but their will did not prevail. The Commonwealth's Attorney, Mr. Bullock (in whom I am proud to find the son of honored parents, whose friendship I enjoyed in days past), has evinced an entire competency to the duties of the station with which he has been recently honored, and which, permit me to say, he honors by the commendable candor and high talents with which he performs his official duties.

I regret that I can not speak in the same commendatory terms of the candor of his aged and very highly talented adjunct. That gentleman represents the *vengeful* feelings of the very near relations of the ill-fated Rothwell and Meeks, by whom he has been employed to convict, if possible, the accused. He has just closed a philippic of four hours against them, as remarkable for vigor of intellect, as for vehemence and impassioned zeal. He implores you, with great earnestness, to check (by a verdict of conviction in this case) the habit of wearing arms, and especially bowie-knives, which has, as he says, latterly so much prevailed and multiplied assassinations throughout our country. He considers the frequency of these melancholy incidents as infallible evidence of the growing degeneracy of public morals, indicating the rapid decline and eventual subversion of our free institutions.

It is the corruption of the people, he tells you, that saps the foundation of a free government, and he refers to the history of Greece and Rome to confirm and illustrate his doctrine. He asserts that he has set, and that all good men ought to set their faces against the degeneracy of the times.

Gentlemen of the jury, I concur with him in the belief that corruption is the great destroyer of free governments, but do not believe with him that its prevalence is so alarmingly evinced by the *incidents* to which he has so glowingly referred. While corruption displays itself upon the surface only of the body politic, it is, like boils on the surface of the natural body, but an evidence of the exertion of the recuperative energies to throw off the pucant matter.

The right of the people to carry arms is little less than *identic* with their freedom. Without arms, they can not vindicate their freedom. Without the right to possess and wear them, they will very soon be without the spirit to use them, even in defense of their liberty. I feel no apprehension for the liberty of my country from that source. I fear nothing from the carrying of bowie-knives; brave men *do not* fear them, and cowards seldom use them. It is wrong to reason against the *use* of any good thing, from its occasional, or even frequent, *misuse*. While our institutions are pure, and especially our courts of justice, we have nothing to fear; they will vindicate the just use, and punish the misuse of bowie-knives, or any other arms which our free citizens may choose to wear. But I can refer him to an instance of the growing degeneracy of morals, more recent, and greatly more alarming, than any, or than all the instances he has named. The recent instance, to which I allude, of the alarming degeneracy in the public mind and morals, is the composure, and even complacency, with which we have listed in the temple of justice, to the mercenary ebullitions, and saguinary efforts, of the gentleman himself. It is in proof that he has received from Mr. Redding, the brother-in-law of the unfortunate Rothwell, a fee of one thousand dollars to convict, if possible, the accused.

He has not appeared in this case as the Commonwealth's Attorney, nor under any appointment by the government, but as *hired counsel*—hired, too, by the incensed witness, Redding, upon whose testimony, mainly, it was hoped and desired by both to produce the conviction and ignominious death of the accused. Gentlemen of the jury, bear with me a few moments while, I, also, attempt to repress corruption by denying it the right of access to the forum and to the sanctuary of justice. Let me tear from its face the illusive and imposing mask under which it hopes to win its way to your favor and exert a bad influence upon your judgment and your feelings. I shall attempt to convince you that his appearance in this case, against the accused, is in contravention of the law of the land and the moral sentiment of all civilized communities—reprobated

as well by the social sympathies of our hearts, as by the precepts of our holy religion.

And first, of the legality of the gentleman's posture in this case. Our constitution guarantees to every man, a *fair* and *impartial* trial by a jury of his peers, and proclaims that no man can be deprived of his life, liberty, or property, unless by the *judgment* of his *peers* or the *law* of the land; by the law of the land, we understand, as well the protective as the punitory laws of our code. The punitory part relates to offenses and their punishment. The guilty are punished, and the innocent are protected. In ascertaining and punishing guilt, the laws are construed and applied to the case of the accused by the functionaries of the government. In the making of laws, there are no *hired* legislators—they are all *elected* by the people—so, in the enforcing of the laws, there are no hired *prosecutors,* Judges, jurors or Sheriffs. I mean hired by individuals. They are all *appointed* and paid by the government. The machinery of judicial proceedings is altogether *official.* The agents are all *official.* There is no clubbing of official powers with that of any other individual, to bear down, oppress, or destroy another individual. The government, instead of assisting individuals to oppress, restrains them from oppressing each other.

The government acts toward every man upon the presumption that he is innocent, until his guilt be ascertained by *official agency* according to the laws of the land. This presumption, that every man is innocent until his guilt be fairly and legally proven, is the most essential element in the corporate structure of civil society, one, without which its parts could not cohere nor exist for a single day—it is not only the cement, but the very *basis* of the civil union. It is the *postulate,* without which the jurist, the moralist, and the divine would plead, write, or preach in vain; without this presumption, war, anarchy and rapine would usurp the places of law, order and justice; upon it the whole fabric of civil society stands poised, widening out like an inverted cone, until it embraced those morals and manners, and those sympathies and charities of

the heart, together with those radiations of mind, which embellish, and sweeten human life. It is a presumption which no man can contravene without poisoning the fountains of human happiness, and thereby proclaiming himself an enemy to mankind. This principle is necessary, not only in the nascent state of society, as its basis, but in every moment of its existence, in every act of its progress—neither law, morals, nor religion, could live without it. In consonance with this great principle, the officers of the Government all proceed in reference to the accused. He stands in the box, shielded as with the fabled ægis of Minerva, by this presumption, until his guilt is proven, beyond a reasonable doubt, and *fairly* proved. The Commonwealth's Attorney, the Judge, the Sheriffs, act upon it. Their oaths for official fidelity require them to do so. They have no motives to act otherwise; they represent the Commonwealth, and she is as much bound to protect the innocent as to publish the guilty. It gives me pleasure to say that the Commonwealth's Attorney (Mr. Bullock) has discharged his duty, fairly, faithfully and ably. He has acted upon the presumption, which I have been urging, that the accused should be considered innocent throughout the whole *progress* of their trial, and until its conclusion should evince the contrary. The distinguished counsel, who represents the avenger of blood in this case, has, with his usual ability, and with somewhat unusual zeal, displayed great devotion to the interests and inclinations of his client.

He was bound by his undertaking to have the accused convicted and executed, unless they should be able to prove themselves innocent. His duty and his energies were to destroy them, guilty or innocent. The duty of the Commonwealth's Attorney was to suppose them innocent until their guilt should be ascertained—the duty of the former gentleman was to suppose them guilty until their innocence should be evinced by a verdict of acquittal. The gentlemen drew, as you will perceive, their motives from directly opposite sources. They acted from different motives, and have thereby subjected the accused to a cross-fire throughout the whole proceeding, and

such must always be the case when hired counsel are permitted to appear against the accused. The appearance of the gentlemen in this case violates the rights of the accused, and especially their great right to be presumed innocent, and profanes the sacredness of the temple of justice, and all the sacred usages and forms of proceeding. It corrupts the streams of justice in their very fountains. It introduces and consecrates the sanguinary and long exploded claims of the next of kin to the slain. Gentlemen of the jury, according to the rude and barbarous usage of man in his aboriginal state, the next of kin had a right to kill the slayer of his father, brother, etc., without regard to the character of the occasion—without inquiring whether it had been inflicted justifiably, excusably, by misfortune, or of malignant design. This practice prevailed even in our day among the Indians of North America, and perhaps still prevails in many of their tribes. It crept into the codes of many semi-civilized nations as they advanced from barbarism. To weed out this vengeful and saguinary principle, and to protect all but deliberate murders, from its impassioned and baneful effects, the great law-giver of the Jews directed a competent number of cities of refuge to be erected, and so distributed throughout Judea, as to yield to the unfortunate homicide, the requisite security from the next of kin to the slain.

The same principle insinuated itself into the code of England, but as she has advanced in civilization she wisely and humanely tamed and rendered it harmless in the shape of a civil action, denominated an appeal of murder, which she permitted the next of kin to institute against the homicide; and she humanely encumbered the action with such technicalities, and subjected it to such delays in its progress, as rendered it harmless to the accused, by affording time for the subsidence of the bad passions of the avenger; while she, in the meantime, proceeded to give the accused a fair and impartial trial by a jury of his peers. But in the appearance and efforts of the hired counsel in criminal cases we behold the re-appearance of that odious and exploded principle, in a

more aggravated form than it was ever displayed among the barbarians, the Jews or the Anglo-Saxons. With them, the unfortunate homicide had to fear only the aroused passion of the avenger. It would subside. It might, possibly, be mitigated or appeased; at most, *none* but the next of kin was to be dreaded—none other dare act; but where counsel are hired by the accused, when his vengeance is at its highest (and it is always in that state of feeling that he employs counsel), his feelings are transferred into those of counsel, and *set* (to use a figure from dyeing) more or less unfadingly, by the size or quantum of the fee.

There the accused had the passion of revenge only to fear—here he was to encounter that passion, combined with the passion of avarice, the most sordid of our nature. But if the avenger might lawfully employ the talented gentleman who represents *him*, and not the Commonwealth, in that case, might he not have employed any given number of our most distinguished lawyers and advocates, and at once overwhelm the accused by their combined talents, eloquence and weight of character? The limits of his vengeful efforts are not to be found in the law, but in his purse. The security of the accused is no longer to be found in the laws and the institutions of the Government, but in his own wealth and the poverty of the avenger. Guilt or innocence, upon this principle, is to be decided not by the constitution and laws of the land, but by the comparative wealth or poverty of the avenger and the accused; and thus, instead of appealing to Heaven, for a decision of guilt or innocence, as in the days of yore in the trial by battle, between the avenger and the accused, we shall have the question decided by a conflict of their purses. And thus our beautiful system of criminal jurisprudence will be so subverted and degraded that the liberty and life of the accused will depend, not upon his innocence, but whether he, or the avenger, can bid highest—the one to preserve, and the other destroy it, by the instrumentality of hired lawyers, who, in competition with each other, for employment, will be seen hovering about the avenger and the accused, ready to be employed by either; and

soliciting employment from both, regardless of the merits of the case, and regardful only of the amount of the fee which may be obtained. Gentlemen, I leave you to contemplate the moral degradation, the wide-spread corruption, which would follow the practice if it were to prevail, which I am resisting as unfair and unlawful.

The venerable gentleman has told you that he and myself practiced law together and abreast for near half a century. It is true, and for the first twenty-five years of that period, he like myself declined all applications to appear against the lives of our fellow men. His first departure from that course was, as he tells us, in the case of the Commonwealth vs. Smith, charged with the killing of Dr. Brown. That was a long time ago, and I am sorry to tell you that he has been at it ever since, and seems determined to keep at it. I take much pleasure and feel some pride in being able to say that I never have taken a fee or appeared as a lawyer against the life or liberty of my fellow man and that no amount of fee could, at any period of my life, have tempted me to do so. I refused a fee of one thousand dollars to do so when I was not worth that many cents. Apart from its being unfair and unlawful, as I verily believe it to be, I do, and always have, reprobated the practice, because of its tendency to indurate the heart and deprave the moral feeling. But I am now contending that it is *unlawful;* and further to illustrate this point, let me suppose that Redding had given to the Judge, the Commonwealth's Attorney, and the Sheriff, and even to you, gentlemen of the jury, the one thousand dollars which he has given to his talented lawyer in this case (I beg pardon of the Judge, the Commonwealth's Attorney, the Sheriff, and of you, gentlemen, for the supposition—I make it only for the argument), to animate them, as he would term it, in the just performance of their official duties. To the Sheriff that he might summon an *impartial* jury, who would convict the accused; to the Judge to decide most justly and impartially against the accused every question of law, which might arise in the progress of the case; to the Commonwealth's Attorney, that he might invert the presumption of law

as to the *innocence of the accused,* and urge, with ardor and zeal, their conviction; and to the jury, that they might evince their love of justice by promptly rendering a verdict of conviction. What would be the public opinion of such conduct in reference to him and those officers who had received his money? Would not all mankind reprobate it, and fasten shame and degradation upon all concerned in a transaction so corrupt? They certainly would. But let us inquire why they would do so.

Would it not be because of the influence of the money upon the fate of the accused? The mere passage of one thousand dollars, or ten times that sum, by transmission, from one hand or pocket to another is, in itself, and, apart from its effect and influence, a matter entirely immaterial and indifferent. It is then *not* in its naked matter of fact aspect, but in the effect and influence of those matters of fact, that the public reprobate it.

The odious effect of money so distributed consists in the pollution which it inflicts upon the pure streams of justice, to the prejudice of the accused. The pith of its effect is in its unfairness toward them. Now, if the trial of the accused can only be *fair,* when all the proceedings against them are *legal,* and all the *actings official,* apart and free from all *force* but that of the law, and all motives to action but those of official duty, and if they are entitled by the constitution to a fair and impartial trial, we can be at no loss to see why the *effect* or *influence* of money exerted against the accused should be deprecated by them, and reprobated by all honest men. Money, therefore, can not be given by the avenger to the Commonwealth's Attorney (nor to any of the judicial officers), because of its unfair influence against the accused.

Now, what is the difference in point of effect, that is, fairness and impartiality, between giving the one thousand dollars to the Commonwealth's Attorney and giving it to the very talented and very experienced lawyer to whom it was given, and to whom you have listened for more than four hours. By giving that sum to the *former,* its effect, under the odious de-

nomination of corruption, would have been let into the prosecution—by giving it to the *latter,* its effect, aggravated by an alien and unofficial volume of mind united with experience, sagacity, and weight of character, has been brought into the case, and their condition thereby rendered worse than if the one thousand dollars had been given by Redding to the Commonwealth's Attorney. It is, gentlemen, in the contemplation of sober reason, unfair, and, therefore unlawful, that the effect and influence of this one thousand dollars should be thrown into the scales against them. It is corruption to an *undefined* extent—I say undefined extent, because, though we can ascertain the amount of the money, we can not ascertain precisely the degree of unfairness it produces—but as any, the least degree of it, is excluded by the laws of criminal procedure, we can, with confidence say that the influence of the one-thousand-dollar fee, most gratuitously and sagaciously exerted by the hired lawyer against the accused, is palpably unfair.

There is, gentlemen of the jury, in the human heart an inherent love of fairness, which, when unbiased by passion, it is sure to display whenever occasions for its display are presented. It pervades all ranks and grades of mankind. It is evinced in all their settled modes of contest—when a fight occurs among the multitude, you will hear the exclamation of "fair play" from the mouths of all who are not engaged in it; and very many, in every crowd, are ready to maintain fairness at all hazards. Hence the popular apothegm, "Fair play is a jewel." Pugilism and dueling have their rules of fair play. The sports of the people, as well as their fights, have some settled rules of fairness, and even war between nations has its laws of fairness; these rules of fairness are legibly and indelibly written upon the human heart, and we perceive them intuitively; we feel their force in every fibre of our frame, in every pulsation our blood; they are venerated everywhere, and in reference to every subject.

Gentlemen of the jury, to give you some idea of the degree in which this principle was cherished by our rude ancestors, when the accused had a right to wage battle with his accuser,

let me refer you to the rules of fairness by which the combat was regulated and conducted, and mark that even in this mode of trial, the accused was presumed to be innocent until convicted—that is, until vanquished by the accuser. You will find the rules to which I allude in the second volume of Montesque's "Spirit of Laws," commencing at page 201; but I shall read only two or three of the rules, from page 203: "Before the combat, the magistrates ordered three bans to be published. By the first, the relations of the parties were commanded to *retire*. By the second the people were *warned* to be *silent;* and the third prohibited the giving of *any assistance to either* of the parties, under severe penalties—nay, even on pain of death, if, by this assistance, either of the parties should happen to be vanquished." Observe, gentlemen, that the relations were to retire. Do you ask me why? Surely lest influenced by the feelings of kindred ties, some of them might assist their relative, and therein violate the principles of fairness. The crowd were to be *silent*. Why silent? lest by their *hisses* or their *plaudits* they might animate the one or depress the other, or exert a distracting influence upon either. Now, let me ask you, does the attitude of the gentleman, and his one-thousand-dollar power, exerted against the accused, quadrate with this rule? What rule of fairness, within the verge of human conception, justifies his position here, and his exertions against them? Does he know how much the *assistance,* given by him to the accuser, may conduce to the vanquishment of the accused? Does he feel conscious that if by this assistance of the Commonwealth (the accusing party), he shall conduce to the conviction of the other party, he incurs, under the spirit of this last rule, the penalty of death?

Gentlemen of the jury, such was the mode, and such the principles of fairness, observed by our ancestors in trying such a case as the one in which we are now engaged—a mode upon which we look back with reprobation; but our reprobation of it is greatly mitigated by the luster of the moral jewelry which lingers about it; and think you, gentlemen of the jury, that the wise and more civilized statesmen and jurists, who rejected

that barbarous mode of trial and substituted the mode which we are now pursuing, rejected with it those principles of fairness which constituted all that was attractive and valuable about it?

Think you that they interred the jewelry with the body of the defunct mode? No, gentlemen—they transferred those jewels to our code; *their* splendor gilds and sets off its symmetry. It is that very splendor which is now being dimmed, that symmetry which is now being marred, by the unfairness of the mercenary and unauthorized efforts of the representative of the avenger of blood. By the theory of criminal trial with us the accused are placed in the custody of the law, protected from all extraneous force, and subjected only to that of its own power, exerted through its own responsible and unprejudiced official agents, throughout every stage of the proceeding, from the inception of the trial to its *finale*. Even after conviction and sentence pronounced, the execution must be done by the proper officer and in the manner prescribed by law.

If the proper officer vary the manner prescribed, as by hanging one sentenced to be beheaded, or by beheading one sentenced to be hanged, he is guilty of murder; and if one that is *not an officer* execute the culprit, even according to the manner prescribed in the sentence, he is guilty of murder. Strange that a man ascertained to be guilty and doomed to death should be protected by the law from all unofficial assaults, and that the same law should allow the life of a man presumed to be innocent to be assailed by the hired representative of the avenger of blood, even in the very temple of justice! By our constitution and laws the accused are allowed to defend themselves against *official* assailment, and even furnished with the means of doing so; they shall be heard by their counsel, and if they are unable to employ counsel, counsel shall be assigned them by the Court; they shall be confronted by the witnesses against them—they shall have compulsory process to compel the attendance of witnesses in their behalf. The jury, the Judge, the Sheriff and the Commonwealth's

Attorney shall be unbiased—all shall be unbiased—and yet the hired counsel of the *avenger*, and he alone, is to be irresponsible, and may aim his poisoned arrows with impunity, nay, lawfully as he would have it, at the hearts of the accused—he is to be the only licensed homicide in the whole judicial coterie—he alone among all in the court-house may, *per fas, aut nefas*, kill the accused if he can with impunity. Can the law, I would ask you, gentlemen of the jury, license such a procedure against the accused? Ought it to do so? Would it be fair that it should? No, gentlemen, no; it neither is, nor ought to be the law. It is a vicious and foul excrescence, which, like mistletoe upon the oak, deforms and distempers the trunk upon which it fastens itself.

It is an erroneous notion, that when a man has a license to practice law he may annoy and harass whom he pleases, in his professional character. No man has a right in virtue of his law-license to harass one man by assailing him with even a civil suit, in the name of another, without a warrant of attorney from that other. Then let me ask the gentleman where is his warrant of attorney to prosecute in this case—he has no authority from the Government, which alone could give it. The commission of the Commonwealth's Attorney is his authority to prosecute, but the gentleman has no authority whatever. The Judge can not give it; he can confer the power only in the absence of the Commonwealth's Attorney, and then only according to the provisions of the Act of Assembly in that case provided. But if he could confer the power, he can not decently appoint a man who had taken a fee of one thousand dollars to convict the accused, if possible, guilty or innocent. He would be bound in honor to appoint some disinterested gentleman of the profession, whose weight of character would be a pledge to the accused, and to the community, that he would conduct the prosecution fairly and justly.

Now, I ask if it be reasonable to suppose that the law which denies to the licensed lawyer the bad privilege of annoying his neighbor in a civil action, without warrant of attorney from the plaintiff, would allow him without a warrant of attorney

from the Government or from any authoritative power whatever, to obtrude himself into a prosecution and exert all the powers of his mind not merely to annoy or harass, but to destroy the life of the accused?

Can it be believed that the law would guard the citizens so scrupulously, in reference to their *property*, against the avarice of the bar, and leave their *lives* a prey to that cormorant passion?

There is no statutory inhibition against such a course, by a hired lawyer against the life of his fellows—and only because the inhibition was to be found in the statutes penned by the finger of Heaven upon the human heart. The Legislature could not suppose that gentlemen of the bar would give in to a practice so obviously contrary to the laws of nature—a practice reprobated alike by the unvitiated feelings of the human heart and the spirit of Christianity. Grotius, after having commended nations for giving commissions to their national vessels, authorizing them to destroy pirates, commends, also, the practice of appointing by commission, prosecutors of crime, "when not any one, who has a mind to it, is allowed to be a prosecutor, but only some *particular* men, who are *appointed by public authority*. That so, no man may contribute toward the effusion of his *neighbor's blood*, but only he who is obliged to it by his office. Agreeable to this is that canon of the Council of Elibous: "If any *believer* be an *informer*, and another by *his* information be either *proscribed* or put to *death*, we have thought fit to forbid him the sacrament, even to the last." Gentlemen of the jury, comment upon this passage is unnecessary. It speaks the language of humanity, as well as of Christianity. Its import applies to the prosecution of the life of one man by another, who has no commission from his Government to do so. Here the talented gentleman who is hired to prosecute pretends to no such authority. The circumstance that the accused are strangers, from a sister State, should (if nothing else could) have restrained him. Gentlemen, the word "stranger" addresses the ear of every generous and benevolent man, and more especially

of every Christian, in a tone of peculiar emphasis. It is a word of consecrated import—consecrated by the Founder of our most holy religion. He enjoined upon all His followers sympathy for, and courtesy toward, strangers—"I was a stranger and ye took me not in," etc. Gentlemen of the jury, I set out with telling you that it was in the first place unlawful for a lawyer to appear for money against the life of his fellow man; and second, that it was immoral for him to do so. I have been laboring (and I hope not without effect) to prove the first point, viz., the unlawfulness of the act. I have, to some extent, in discussing it, anticipated the second; but it was unavoidable, for the laws are rules of moral duty, though they do not embrace defense, and enforce the *imperfect* obligations of morality, such as charity, benevolence, gratitude, etc. They enjoin only the duties of perfect obligation.

I contend that the counsel who is now hired to convict his fellow men, in a *capital* case, violates in the *very act of being so hired,* all the *imperfect* obligations of morality; and if his efforts produce conviction, he violates the most important of all the rules of *perfect* moral obligation. *"Thou shalt not commit murder,"* is the rule to which I allude; and I urge that there are more modes than one of committing that crime. A man's life may be destroyed by false swearing, or by erroneous and impassioned pleading, as well as by the stiletto; and the man who deliberately destroys life, by false swearing or by erroneous and impassioned pleading, is not less guilty at the bar of conscience than the man who deliberately perpetrated the same deed by the dagger. The accused are prosecuted for murder; suppose them to be innocent, and suppose that by the efforts of the hired counsel they shall be convicted and executed—would he not be guilty, in a moral point of view, and at the bar of conscience, of the very crime he had imputed to them? You must answer in the affirmative—and he (but for the illusion into which he seems to have fallen upon this subject), would be constrained to answer, as David did to the prophet, "that man is surely guilty," etc.—and might it not, in the words of Nathan, be replied, *"thou art*

the man." I wish I could disenchant and redeem his mind from the illusion in which the sorceries of avarice have enthralled it. I wish I could convince him and the few among our lawyers, who, influenced by his example (and the example of one or two other lawyers of distinction), have been seduced into the practice of receiving fees to assail the lives of their fellow men; but I almost despair—the habit with him has become too inveterate; yet, in the hope of restraining the younger members of the bar from a practice which detracts so much from their professional, and (according to my notion), so much degrades their personal character, I will pursue the subject —for it is in this view, mainly, that I have devoted so much attention to it. I will not deny, however, that I had the further view of endeavoring to convince you, gentlemen of the jury, that you ought to distinguish between the efforts of Mr. Bullock, the accredited organ of the Government, and those of the gentleman who has (influenced by a thousand-dollar fee) obtruded himself into this prosecution; and to regard those of the one as a stream emanating from the pure fountain of public justice, but a little discolored by the excitement from which even official posture is unable to redeem our frail nature. Those of the other as a turbid and muddy stream of large volume emanating from the fœtid marshes of exuberant avarice, betraying its source by the noxious effluvia which it emits in its course. The one as the fountain of health and of life to the innocent; the other, as the Bohan Upas, destroying indiscriminately by its poisonous breath all whom chance or accident shall have thrown within its grasp.

But, dropping the figurative, let me discuss further, in plain prose, the moral position of the lawyer who appears for fee against the life of his fellow man. He is employed to devote all his talents and attainments, to the *destruction* of the accused; that is the object at which the avenger of blood aims. To achieve that object he gives the one thousand dollars; for that sum the lawyer engages to take the life of the accused, if by the weight of his character and force of his talents he can possibly do it; if the death of the accused

could have been effected justly, by the operation of the laws and the agency of the public functionaries, then the one thousand dollars would not have been given; the purpose of the avenger would have been attained without so large an expenditure on his part. It was then to destroy the accused, guilty or innocent, that the counsel was engaged. The engagement must have been either to convict or acquit the accused. But the avenger would not have given one thousand dollars to procure their acquittal. It must, then, have been given to destroy them—to take their lives, and it must have been received by the lawyer to effect the purpose for which it was given, namely, to take the lives of the accused, or, to convict them, which is identic with taking their lives.

Gentlemen of the jury, if this is the fair conclusion, and I feel so sure that it is that it can not be resisted, then, I would ask you, I would ask casuists, I would even ask the venerable and distinguished lawyer himself, to tell me what is the difference of the *moral guilt* between *taking a man's life* for *his money*, and *taking money* to *take his life?* I declare, solemnly, that if there be a difference in the *moral guilt* I have not brains to comprehend or perceive that difference. I can readily perceive, that in reference to the exterior aspect of the two cases, the former would seem to have the advantage of the latter, in the fact that with it are associated a boldness and daring of which the latter is entirely destitute. The highwayman in taking the life of another for his money hazards his own life. He may himself be slain, and if he should not he may be apprehended, convicted, and expire on the gallows.

He incurs the hazard of all these events. There is in chivalry, a charm, a fascination, I had almost said a witchery, which gilds, and to some small extent mitigates crime itself. But in the latter case there is no one mitigating, not one redeeming trait. The hired lawyer knows before he contracts to take the lives of the accused, that they are not only without arms, but bound hand and foot by the cords of the law; aye, and dumb too. He has nothing to fear from them. He has

but to compound with his own conscience, and without any hazard whatever, fall to work upon his victims. But still it would seem to me that the heart of the lawyer thus engaged, must become strangely callous to enable him to proceed in the work of death, with the levity and sportiveness with which it has been conducted in this case. And yet the gentleman tells us, and quotes Burns in affirmation of the sentiment, that "the heart is ai, the part ai, that is right or wrong." Does the gentleman expect us to take as a *fac-simile* of a *right heart,* the feelings and sentiments which he has displayed throughout the management of this case? It is not by such sentiments and feelings that the Scottish Bard illustrates his conception of a heart that's right; let me refer the gentleman to the following delicious morceau upon the subject of the heart from the same poet:

"The sacred low of weel placed love,
Luxuriously indulge it,
But never tempt the illicit rove
Tho' nothing shou'd divulge it;
I waive the quantum of the sin
The hazard of concealing,
But ah, it *hardens* all within
And petrifies the feeling."

Here we see how the heart is *hardened,* and the feelings *petrified,* by indulging a passion less sordid than *avarice.* Burns thus shows how the heart may be rendered wrong. Let me refer the gentleman to another poet, who, like Burns, ministered at the altar of nature. He thus instructs us how to keep the *heart aright ai:*

"Be thine the feeling of the mind,
That wakes at honor's, friendship's, call,
Benevolence, that unconfined—
Extends her liberal hand to all;
By sympathy's ututored voice
He taught her social laws to keep;
Rejoice, if human heart rejoice,
And weep if human eye shall weep.
Who feels for others' woes,
Shall feel each selfish sorrow less,
His breast, who happiness bestows
Reflected happiness shall bless."

Which, gentlemen of the jury, is the *right heart,* the one displayed by the lawyer, who permits himself to be employed to degrade and destroy the accused, or the one portrayed and recommended by the poet just quoted? I will not insult you by affecting not to know what your answer will be, or rather what it is. I should ask your pardon for having asked you the question. The precepts of the poets of nature, like those of the Gospel, in reference to the feelings of the heart, are but principles of fitness resulting from the nature of man, and his social relations. Human life is at best but a tissue of hopes and fears, of cross-purposes and inquietudes, of alternated sickness and health, of sorrows and joys, and the reciprocation of kind offices and sympathies of the heart by men in their social condition, alleviate the sorrows, mitigate the woes and increase and heighten the joys of each. Man is not a solitary animal—he can not live alone; his organic bias and natural aptitudes are *all* social; but with them all, without the fine sensibilities of the heart, society would be a curse to him, for without them there would be no conscience —and without conscience there could be no virtue, and without virtue there could be no happiness.

Hence, those who permit inordinate avarice, or the extreme of any other passion, to petrify their hearts and harden their feelings, are warring with the purposes of nature, in reference to the social condition of man—man's long state of infantile imbecility and helplessness, and his dependence, during all that time, upon the sympathies of the heart for existence and sustenance, indicate the high estimate which nature places upon them. Infancy is the period of the heart's pupilage in the divine science of sympathy. Our first lessons are received in the nursery; they fall from the lips of maternal affection upon our infant hearts, as gently as the dews of heaven descend upon the tender grass. It is thus the virtues are planted in the heart, and take root, and grow in its sensibilities—it is *here,* in the nursery, that valor, too, the associate and protector of his sister virtues, germinates and unfolds its nascent energies—stern and vigorous, bold and daring as

it becomes, it is like the other virtues, the offspring of weak but lovely woman. By a wise arrangement of nature, the ladies are made to grow, and to admire it, because they constantly need its protecting influence. They respect it in their husbands, and cultivate it in their sons. The little boy, but just emerged from his cradle into his first pantaloons, while he listens to the tale of female distress, or injured innocence from the lips of his fond mother, feels the germ of valor glow in his bosom, and distends his little chest, and while she tells him that the fair damsel was rescued from brutal violence by some chivalrous knight, struts across the floor in steps of measured pride, and pants to be a man, that he also may signalize himself by deeds of valor and benignity. The mother rejoices to see in the flashing eyes of her lovely boy the scintillations of his father's spirit—a spirit in the full and protecting radiance of which, and the blessing of heaven, she and her little ones have thus far rested securely.

Gentlemen of the jury, it is thus the heart is trained, and its sympathies and feelings schooled in each successive generation to the performance of the social duties and the practice of the virtues. Yes, gentlemen, it is from the physical weakness of women, that man derives his moral strength; and shall her lessons be set at naught, and contemned with impunity? Will not the gentlemen who receive money to destroy the lives of their fellow men be signally rebuked by public sentiment? Will not the ladies take cognizance of the subject, and place their withering veto upon a practice so repugnant to all their feelings and inculcations? The venerable gentleman has humorously, wittily, and even prettily, protested against a change of venue in this case, from the jury to the assemblage of beauty, taste, and intelligence, with which this trial is honored, and the bench of the Judge adorned—and assigns, as a reason for this protest, first, that the venue has been once changed and cannot be changed again. And, secondly, that he would not be at home before that fair tribunal, by reason of the want, on his part, of imposing personal presence, and the aptitudes, manners,

and attractions, suited to such an assemblage. This little sally on his part, was intended for the ladies, and designed to divert their attention from the *repulsive* posture which he occupied, and to conceal its moral deformity from their view. I tell the ladies that every question involving morals belongs in an emphatic manner to them, let the law of the case be decided as it may by courts of law—the morale of it must, directly or indirectly, be finally settled by their tribunal in its appellate character. But I have occupied too much of your attention upon this preliminary point, and perhaps have been too divergent and diffusive in the discussion of it. But, impressed as I am with its importance to the profession of the law and to the community, I could not pretermit it.

What I have said is not in any spirit of unkindness toward the venerable and very talented gentleman who has been employed by the avenger against the lives of the accused. I have no unkind feeling toward him. I claim no right to rebuke him personally. I have no motive to do so; but I have a right to reprobate the practice, and I regret I can not do it in the abstract. My observations are intended to be applied, not to him *personally*, but to the practice *personified* by *him*. It is true, and pity it is 'tis true, that he is not the only distinguished lawyer in the Union who has permitted himself to be employed against the lives of his fellow men. A few, and I am glad to say very few, others, have lent the sanction of their talents and weight of character, to this odious and inhuman practice. I feel concerned that it should be put down, and regret that our courts have permitted it. The Judge should denounce it as unlawful and unfair, and refuse to permit it. The Prosecuting Attorney should feel himself disparaged by any attempt to associate with him a lawyer hired, not to represent the Government, but the revengeful spirit of the avenger of blood. He should feel that he is the organ of the law, ministering at the altar of justice, and to maintain the sanctity of his position and his own competency, he should exclaim to the mercenary representatives of the avenger, *"procul—O procul estate prophani;"* and such I am

sure would have been the course of the Prosecuting Attorney in this instance, had he not felt restrained by that diffidence which is inseparable from youthful talents, in the inception of its official course. But let me tell that young gentleman that the competency which he has displayed in the management of this case will leave him without apology or excuse should he, hereafter, submit to the like intrusion.

Gentlemen of the jury, you must have perceived that I commenced with the topic with which Mr. Hardin closed. He would have you convict and sacrifice the accused for the purpose of putting down, if for nothing else, the practice of wearing bowie-knives, and thereby checking the torrent of corruption which, as he would have you believe, emanates from that practice, and threatens the subversion of our free institutions. I would have you believe that the practice of taking money to take the lives of his fellow men in our courts of justice, as he does professionally, is greatly more unseemly and corrupting in its tendencies, than that of wearing bowie-knives; that the latter is a matter of constitutional right, while the former violates the constitution and laws of the land, and every precept of Christian morals. You have heard us both, and will judge between us. What I have said, however, upon this point, is intended by me rather as a kind of nuncupative legacy to the junior members of the bar, many of whom are attending this trial, and are the sons of my old friends, than for your consideration as jurors in this case.

I would say to them, that their license to practice law invests them with no powers to violate the social duties; that by becoming lawyers they have not ceased to be men; that the high and honorable profession which they have chosen imposes upon them increased obligations to cherish and promote those feelings of the heart upon which the virtues, and of course the happiness of mankind, so generally depend; that every political community consists of an indefinite number of domiciliary communities, the number of which are united to each other by the ties of affection, not simulated, but natural, emanating from the heart—the relations of the members of

the political body are artificial—that the artificial ought not, indeed, can not, absorb or extinguish the natural. In the family circle the virtues and charities which exalt, embellish and adorn our nature, are reared under the fostering care of maternal kindness, moistened and bedewed from the sacred fount of the maternal *storge,* as I have already told you. That in their sacred domiciliary circles, the hearts of all are reciprocally united to that of each other, by ties which though of gossamer texture, are stronger than hempen cords; and that whenever a citizen is destroyed, a husband, a father, a son or a brother, is torn from this family cluster by a disruption of all the ligaments which bound their hearts together; that the heart of each bleeds with agony, and that of the mother is broken.

Now if there is any meaning in the divine precept "Do unto others as you would that they should do unto you," how can any lawyer who is a husband, father, son, or brother (and every lawyer must come under some one or other of these denominations), reconcile it to himself to take a fee to take the life of a man sustaining the relations I have mentioned, and thus incur not only the moral guilt of homicide, but with it that of inflicting in many instances widowhood and orphanage, and agony of feeling in every instance upon some circle of domiciliary affection; for every man (I repeat) belongs to a circle of that kind. I would say, therefore, in conclusion upon this point, to every junior of the profession, touch not, handle not the price of such complicated cruelty—degrade not your profession, harden not your feelings by an act so revolting and remorseless.

I will not, gentlemen of the jury, apologize to you for having detained you upon this preliminary point so long—a point not involved in the cause you are sworn to try, but yet, as I think, of sufficient importance to the community to plead in its importance, my excuse for the time I have directed to it. The question in issue, and the only question, is, were the accused placed under the necessity, by the conduct of the unfortunate Rothwell, Meeks, and others, of taking the lives

of those two misguided men, in defense of their own? Gentlemen, the moment the testimony was closed on the part of the Commonwealth, I perceived distinctly from your countenances, that you had even upon that ex parte and adverse testimony, decided the question in favor of the accused. I have perceived, also, that up to the moment, when I rose to address you, your decision remained unshaken, unaltered, and therefore, it was, that I lingered so long at the threshold of the real subject of your enquiry; my clients I know would excuse me; they felt no apprehension; they had obtained all they desired, an enlightened and impartial jury; their acquittal (they knew) would follow, of course. But if the case had needed the utmost and the ablest discussion, they saw, and heard the efforts, in their behalf, of my friend Col. Robertson, an aged, experienced and talented lawyer—of young Mr. Thompson, whose display in this case may be considered by his friends as a pleasing presage and sure pledge of his future professional eminence; and they must have been delighted, as you, and I, and all around us were, with the sunshine luster shed upon the law and facts of this case by the transcendent genius of their friend, and fellow Mississippian, Mr. Prentiss. I must, however, more because it is expected of me, than needed by the case, re-touch some of the topics which they analyzed so well and discussed so ably. But I do it with my intellectual vision dimmed by the reflected light of the genius which has beamed upon them, as our ocular vision is sometimes blinded for a time, by the strongly reflected rays of the sun. Inded, were it not that Mr. Hardin (of whose posture in this prosecution I have discoursed you), has given some distorted views of the testimony and the facts, and in some degree misconstrued, as I think, the law, I would not have said a word to you upon the main subject, believing, as I have already told you, that your verdict had been, long since, virtually formed in their favor, and that so far as speaking might be thought necessary, more had been said and better said, than anything I could say.

Gentlemen of the jury, let me, before I make any comments,

exhibit a condensed view of the leading facts of the case. They are, that, Judge Wilkinson, with his two friends, was at the Galt House in Louisville, on his way to Bardstown to marry Miss Crozier, an accomplished young lady of that place, whose affection and consent he had previously won. The day fixed for the marriage was the Tuesday next succeeding the day of the catastrophe which gave rise to this prosecution; his brother Doctor Wilkinson, and his young friend, Mr. Murdaugh, had come with him as friends on this occasion, and they remained in Louisville a few days to replenish and fit their wardrobe for it; in the doing of which, they became acquainted with the witness, Mr. Redding, a tailor of that place. He made a coat for the Doctor—it did not fit him—a dispute arose between him and Judge Wilkinson, upon that subject—some blows were exchanged—they separated—the Judge, his brother, and friend, went to their lodgings at the Galt House. This happened about 4 o'clock, P. M., on the day of the catastrophe. Redding was much enraged at what he supposed was the ill-treatment he had received from the Judge, who had snatched up a poker and aimed a blow at his head with it, which, as he warded it off, took effect without hurt or injury of any kind upon his arm. Redding went to the Mayor's office to obtain process against the three, for the Doctor and Murdaugh had, during the scuffle between him and the Judge, drawn their Spanish knives. The clerk of the court told him that he could not issue process until furnished with their names—he promised the clerk that he would get the names and return. He, and his unfortunate brother-in-law, Rothwell, went together in the evening about dark, or a little before, to the bar-room of the Galt House, to obtain the names (as he says,) of the Mississippians—having obtained them upon a slip of paper from Mr. Everett, he remained in the bar-room for some 15 or 20 minutes, when Judge Wilkinson entered. Whereupon, Redding accosted him, by asking him, if he was not the man, or gentleman, who had struck him with a poker—and commenced abusing him in a most vituperative manner—calling him rascal, liar, scoundrel, coward, poor

pitiful Mississippi Judge—and stating that he could whip them all three, if they would lay aside their weapons, and go into a room or the street—the Judge replied, only, that he would have nothing to do with a man of his profession—that if he laid his hand upon him he would kill him—and after listening for some time, as he walked backward and forward across the room, to the foul abuse of Redding, retired, accompanied by Mr. Everett, to his own room, on the second floor—after remaining in his room for about 15 minutes, they came down into the bar-room to be in readiness for supper, which was nearly ready. When the Judge retired, Redding exclaimed, the damned coward has fled—and when the Judge returned to the bar-room with the Doctor and Murdaugh on their way to supper, Redding having retired during the Judge's absence, immediately entered the bar-room after them, and exclaimed in a high voice, they are all *three* here *now*, and accosted Murdaugh, saying, you are the gentleman who drew the knife, or a bowie knife, upon me at my shop to-day. Murdaugh replied, whoever says I drew a bowie knife upon you, is a damned liar, and displayed in his right hand a white handled Spanish dirk knife, telling him to stand off, and swearing that he would kill the first man that laid his hands upon him; whereupon, Meeks seized the wrist of his knife hand, exclaiming, you *are* the damned little rascal! Striking him over the head with the butt-end of a *cow-hide*, when several persons rushed up, and Rothwell struck him over the head with a hickory club, and cut his head badly. Murdaugh took the knife into his left hand and stabbed with it at Meeks, who retreated, striking Murdaugh with the cow-hide—Murdaugh stuck to Meeks, although stricken and pressed by others, until his right hand, extricated from the grasp of Meeks, had gained the knife, and with it he gave the fatal stab to Meeks. During this time, Dr. Wilkinson was knocked down and beaten by Holmes and others, almost to a jelly; Judge Wilkinson had also been struck, and stabbed with a narrow blade knife, or a sword cane, which some one of the friends of Redding used on the occasion. While the

Doctor lay helpless and nearly lifeless on the floor in another part of the room, Rothwell joined those who were beating him, and commenced upon him with his hickory club—while beating him, the Judge to relieve, or rather save his brother, stabbed Rothwell with a bowie knife in two places, one stab in the side, and the other more towards his back than front. He also, with the same knife, stabbed Holmes through the arm. The Judge having relieved his brother, retreated (keeping him and Murdaugh before him), through the passage and upstairs to his room, keeping between the mob and them, and protecting them and himself by brandishing his bowie-knife. They were pursued to the stair case and struck with chairs, and as they ascended, shot at by Oldham. Redding disappeared as soon as the affray commenced, and was not seen until it closed. The accused were unknown to any of those who assaulted them—had never seen nor conversed with any of them. The friends of Redding, who had, all except Rothwell (who accompanied Redding), dropped in at the Galt House seasonably, were Holmes, Halbert, Oldham, Johnson, Meeks, etc. The first five were among the stoutest men in the valley of the Mississippi. Redding was armed with a dirk, which he had borrowed on that evening on his way to the Galt House, Rothwell had a large seasoned hickory stick—Oldham had a loaded pistol and bowie knife—Meeks a cow-hide with a knot tied upon the small end of it, and a Spanish knife—the knife, however, was surrendered to Oliver, his friend, before the onset. After Judge Wilkinson had left Redding and retired to his room, these men assembled in the passage, and Rothwell proposed that they should go up to the Judge's room, take out the damned rascals and give them *hell.* Mr. Everett, one of the proprietors of the house, left the bar, in which he was, when the rush was made by these men upon the Mississippians (which was instantly upon the annunciation by Redding, that they were all three present), under the full conviction that a scene was to ensue, which he had no inclination to witness.

Gentlemen of the jury, these are leading facts which have

been proved in the case. I have omitted many incidental, and subordinate facts, to avoid consuming your time, by a tedious repetition. They have all been stated with accuracy, and commented upon with ability, by my associate predecessors in the defense.

Now we allege, first: that there was a regularly formed concertion between Redding and his associates, to beat, and degrade the defendants, if not to destroy them. And, secondly, whether such conspiracy had or had not been formed, the accused were placed under the necessity, by the conduct of Rothwell and Meeks of destroying them, to save their own lives, and so were justifiable by the law of nature, and the laws of the land, in doing the *acts,* with which they are charged in these indictments.

And, gentlemen, first of the conspiracy. You find that Redding was much enraged by the affair at his shop; that he was further inflamed by Johnson, the butcher, who spoke to him of the insult he had received, in aggravated terms, vaunted of his own manhood, by declaring that he was as good a piece of stuff as ever was wrapped up in so much *hide,* and declared that they would get *Bill Holmes and his party* and give them the Devil. Redding at the instant declined the proposal, but declared that he would have *satisfaction.* He and Johnson left the shop and went together to the Mayor's office, when Redding applied for process and promised *to return with their names* and obtain the process. Here Johnson and Redding separated—the latter went by the shop of his brother-in-law, the unfortunate Rothwell, took him along with him, and returned (by what route we cannot know exactly) to his own shop, which is but a short distance from the Galt House. Where Johnson went we do not know—the next place we meet with him is at the head of the Market-house, in company with Bill Holmes, Halbert, etc. The same coterie is afterwards, late in the evening, seen on Main street near the Galt House—these men are all at the Galt House and unite in making the attack upon the Mississippians.

Now, gentlemen of the jury, weigh these facts, ponder upon them, and ask yourselves if they could all be the result of accident. Mark that Redding declared that he would *have satisfaction.* Johnson and Meeks urged him to it, and prescribed the mode, which was ultimately adopted, to get Bill Holmes and his party and drub or lynch them. Did Redding pursue the plan of obtaining satisfaction which he had proposed? Did he when Everett gave him the names of the Mississippians return to the Mayor's office as he had promised the clerk? On the contrary, did he not linger at the bar until Judge Wilkinson came in, which was some time, and after he had seen the Judge and vented his venom upon him, did he then, after the Judge had retired to his room, return to the clerk and sue out the process in futherance of his ostensible purpose. No, gentlemen—and why did he not? Evidently because either his proposition to seek satisfaction at law was a mere pretense, to cover the conspiracy proposed by Johnson, namely, to get Bill Holmes and his party and give them hell—or, if he was sincere in his proposition, he was led to abandon it, and adopt that of Johnson; that it was his primary or ultimate design cannot be doubted, for Bill Holmes and his party were there and united with Redding and his party in making the onset. Meeks, Johnson and Rothwell were of Redding's party.

How came they all to meet at the Galt House that evening, and about the same time of evening—and what is remarkable, animated by the same spirit, a spirit of hostility toward the Mississippians? How came they all to understand the *watch-word* pronounced by Redding upon their entering the bar-room? For you remember that the moment they entered he exclaimed, *"They are all three here now"*—and instantly the rush was made. Mark, Gentlemen, their malicious design was against the Mississippians, and they were three. The words *all, three* and *now* are to be construed in reference to the interview which had taken place between the Judge and Redding about fifteen minutes before. *Then* there was but *one;* the *three* are here *now. Their* vengeance would not be

slaked, their purpose to punish and degrade *all* would not have been accomplished by action *then;* but *now,* as they are all *three* present, their purpose may be affected. Mark, too, gentlemen of the jury, that Redding was the only man of the conspiracy who knew the Mississippians personally. They had conspired to act upon the men who had insulted Redding; but they did not know them. *Redding* did; no other man in the house could have given the signal but Redding. They alone of all the men in the house could understand the signal. How could they understand it unless by previous concert?

Their condition is certainly a very unenviable one. The lawless conspiracy which they formed to destroy the accused resulted in the death of two of the co-conspirators; and to avoid the imputation of the moral guilt of the murder of their friends they are obliged to deny the conspiracy, upon oath, notwithstanding they can not flatter themselves that there is in existence one honest man who can believe them—alas for the frailty of human nature.

There is, gentlemen, fortunately for the interests and happiness of mankind, an impress upon truth which we discern, as it were, by intuition. Man is a rational being—he acts from motive, and when he aims at any end, whether good or bad, he selects and adapts the means to the end. The means to be suitable must be homogeneous, otherwise instead of promoting his design they will neutralize their force by antagonism and fail in their efficiency. A good purpose is promoted by good means—a bad purpose by bad means. Here we may learn the purpose of the agent from the complexion of the means he has employed to achieve it, and hence we can ascertain the character of the means from the known character of the purpose. Therefore, when a witness swears positively against the inference which every rational mind would draw from established or known facts, he is not to be believed. The known or established facts can not lie. When those facts consist of acts done by men, as the agents were rational, we can infer their motives from their acts—and if the acts were simultaneous and concurrent, by agents living remote from

each other, and pursuing different avocations, we can, we must, infer that they agreed or *concerted* to act *together* and at the *same time*, though they should all swear positively to the contrary. In the moral as in the physical world, homogenous matter alone coalesces. Now, it was quite unnatural that Bill Holmes should have left his beat and with his party gone to the Galt House to beat and degrade three Mississippians who had never wronged him in word or deed, whom he did not know, and of whom he had never heard.

It was equally so in relation to all the others except Redding, who alone knew them, and had, or supposed he had, cause of complaint against them. Holmes and the others must, therefore, have been informed of the grievance of Redding, and must have agreed upon the time, place and manner of avenging it, by their joint agency; therefore, what the two witnesses have sworn is negatived by the unvarying laws of nature, as displayed in the agency of man. What they have deposed upon this matter, not only lacks the congruity and symmetry of truth, but is stamped with the unglossed impress of a vile and execrable counterfeit. Yes, gentlemen, if every man concerned in that nefarious transaction were to swear that there was no concert, no conspiracy, they would not under the state of facts disclosed in this case, they could not be believed.

Gentlemen of the jury, is it reasonable to suppose that these three gentlemen, strangers from a distant State, one of them to be married within four or five days, would form a conspiracy to assault some eight or ten giant Kentuckians? They have been proved to be intelligent, well-bred gentlemen, of pacific habits. One of them has been a Judge of the Superior Court in the State of his residence, and, of course, a conservator, not a breaker, of the peace, and a member of the Legislature, and to be now a commissioner, appointed by his State, to negotiate for her a loan in Europe. I repeat the question: Is it reasonable to suppose that such men, under any circumstances, and especially under such as I have named, would form such a conspiracy? Gentlemen, when the excitement

was raging in Louisville upon this unhappy subject, I asked Mr. Coleman Daniel, a very respectable, honest and wealthy mechanic of that city, if he, also, was excited against the strangers. He replied, "No, sir; it would be hard to persuade me that an intelligent gentleman, who had come all the way from the State of Mississippi to this State to be married, would, upon the eve of his marriage, of choice, and without a necessity for it, get into such a scrape." Your answer will be like this. You will say with him, that no man of common sense, and still less a well-bred gentleman, would willingly present himself at the altar of Hymen with his eyes blackened and his face lacerated and bruised.

When a man is about to be married his mind is far otherwise disposed; his feelings are joyous and pacific, attuned by his prospects to purposes of happiness, harmony and peace—not to jars, tumults and broils. Virtue enlarges her empire in his soul, by presenting new topics of thought and new subjects of aspiration. He feels that his nature is undergoing an ameliorating process, and anticipates from the event to which his heart is devoted ten thousand felicities, all of which will perhaps never be realized—but I am too old to recollect much about this matter—I will barely say that the anticipated pleasures of the lover are not realized only because they are too sublimated for the matter of fact condition of even the happiest state of matrimonial life—and the matrimonial is the only happy condition of life. It can not therefore be believed for a moment that Judge Wilkinson would sacrifice all his prospects of matrimonial bliss to a scheme so wild, so visionary, so sanguinary, and so impracticable; the very nature of such a conspiracy as Mr. Hardin ascribes to the three Mississippians is too absurd to be entertained seriously by even that gentleman himself. He, notwithstanding, still persists in urging it upon you, and as an additional proof of it he urges their having chosen to pass through the bar-room to supper. Here, gentlemen, Mr. Hardin expatiated at great length upon the structure of the Galt House—its public and private ways, its high-ways and by-ways, its dining and sup-

ping as well as its culinary regulations, and especially called your attention to a private entrance into the dining room through which the Judge, the Doctor and Murdaugh might have passed to supper in *safety*, and would, as he contends, have done so if they had not formed a conspiracy in their room before they left it to kill Rothwell and Meeks, etc. He does not seem to understand the principle upon which mobs are formed—that it is a principle of cowardice which aims to effect its bad purpose without hazard or exposure to personal danger. It confides in numbers for security, and therefore all mobs are of *several* against *one* or of *many* against a *few*. A mob of *one* against *several* is a solecism, and a mob of *three* against a *dozen* is equally absurd; and in this case the absurdity is aggravated by the consideration, that the three men were of frail physical structure and entire strangers. Again, such a combination must have had for its principle of cohesion and action the most determined *courage* in each, and, of course, must have been a natural affinity between brave spirits, for the purpose, not of assault, but of mutual defense. Mr. Hardin's conspiracy is destitute of all the essential ingredients necessary to its formation—it is without soul and body both.

There was neither *cowardice* nor number there—the elements of such an existence as he fancies were absent. Gentlemen, I repeat emphatically, that cowardice is the element and basis of all *deliberate* mobs—that they originate in and emanate from a principle of cowardice—hence, brave men as members of a mob or conspiracy, not relying upon their own firm spirits, but infected by the principle of their union, play the dastard, and, hence, the man who shall be assailed by a mob must, if he hopes to escape its danger, meet and defy it. He must, to save his life, expose it; he must beard and conquer the danger—he need not hope to soothe it by addressing its reason,—it has none; it is all passion, and passion never listens to reason. An appeal to its magnanimity would be equally unavailing. It is a coward and has no generosity or magninimity. Flight inspirits it and increases the danger.

I repeat, then, that his only hope is in defying it. I speak, gentlemen, not only from observation through life, but from experience in the early part of my life.

Now what is to be rationally inferred from the facts upon which Mr. Hardin relies as the basis of his concluding argument in favor of his alleged conspiracy? Why, evidently, that the Judge and his two friends had strong reasons to believe that a mob had assembled in the bar-room to assault, abuse, and degrade, if not destroy them. What were they to do? Were they to take council from fear and remain in their room supperless, or slip down the stairs quietly, and silently, and creep to supper through the private door to the dining room, of which Mr. Hardin speaks, or say to themselves and each other, "We will arm ourselves with pistols, if we can get them, and if we can not get pistols, we will arm ourselves with the knives which we have worn in traveling, and we will go to our supper as usual, and by the usual way—the way pointed out to strangers by the index upon the door." What less could they say, what less ought they to have said? What other course could they have taken and retain their own self-respect, and the respect of honorable men? There is no proof that they knew of this private access to the supper-table, even if they had been capable of skulking through it. Mr. Hardin may have known it, for he tells you that he spends half his time at that house, and it would seem from the very detailed account he has given of the culinary and table regulations, that his powers of explanation had been whetted by his gastronomic impulses. But I will suppose, for the sake of argument, that they knew of this private way and door to the supper room; what then? Had they not a *right* to go along the public way—to enter the supper room by the public door? And if they had a *right* to do so, you can not infer criminality from the exercise of *their right*. But, gentlemen, I contend that they could not, as men of honor, under these circumstances, have gone to supper by any other way.

When Judge Wilkinson left the bar-room only fifteen minutes before, Redding exclaimed, "See, the damned coward has

fled." What would have been said by Redding and his co-conspirators if they had remained in their room or glided stealthily from it to the supper room by the *private* way? What would the community have said, and more particularly the people of Mississippi? How could they have returned to their own State? And which is of more importance than all other considerations, what would their own consciences have said to them? The reproaches of their fellow men they could avoid, to some extent, by retirement and seclusion. But they could have no refuge from themselves. But, gentlemen, there was another obligation stronger, if possible, than any, than all I have mentioned, upon Judge Wilkinson, to take the course through the bar-room to the public door of the supper room. It is in proof that he was to be married on the Tuesday following, to a beautiful and accomplished young lady. Could he, if he had skulked, have dared to present himself to her, and to her venerable mother, the widow of a gentleman of known gallantry, and the sister of General Hynes, who is the pink of valor—whose fame is identified with that of Jackson, Adiar, and the other heroes of the victory at New Orleans, and next in splendor of fame to the two I have named.

I repeat, how could he have dared to form a marriage connection with such a lady, and such a family? If, having acted otherwise than he did act, he had dared to present himself, he would have been rejected with scorn and contempt. I speak from long and intimate acquaintance with the family. Gentlemen, had he hesitated (and I am proud to believe he did not), all these considerations would have presented themselves to his mind, and his soul would have rebuked him for his hesitancy. There was but one course for them to pursue. There was but one sentiment which could animate them. That course was the pathway of *honor*. That sentiment is (with them and all honorable men), *that others are as much bound to fear and avoid as we them.* There is, there can be, no obligation on one man to fear another.

Men politically equal—equals in right and duties—ought not in the moral, as equals in the natural world can not con-

trol or detrude each other from their positions; and, therefore, equals ought not to fear each other. Conscious of this, a sensible man will not annoy another, and a brave man will not submit to annoyance. This sentiment is very pithily inculcated by Fingal, upon his grandson, Oscar: "Never *search thou for battle,* my son, nor *shun it* when it comes." Gentlemen, can you think of a consideration which would have (I will not say justified) palliated the conduct of Judge Wilkinson and his friends had they acted conformally to the philosophy of Mr. Hardin? This part, and indeed every part of the case, I would very willingly submit to the decision of the ladies.

They admire men who can protect them, and of course detest cowards. It is as I have said in another part of the case, their high prerogative, to give law to the world, upon the subject of character. They ordained in the infancy of the world that valor was the *sine qua non* of excellence in the character of man. That ordinance has continued, and will continue unreversed till the end of time. To that ordinance in all its import, the accused conformed throughout the complicated scene we have been examining. Away then with the rules of action which Mr. Hardin has been prescribing for the accused, under the circumstances of this case. They had learned other lessons. They consulted nature, and obeyed her oracular responses. They had been taught to assert and vindicate their own rights, while they scrupulously observed the rights of others, and abstained from violating them; that they could not consistently with self-respect, be deterred from exercising their own rights, more than they could consistently with honor, and honesty, violate the rights of others. These responses of nature were embodied in the ordinance which I have just told you was enacted by the ladies in olden time, or rather when time was very young. Conformably to that ordinance, the accused came as they had usually done, to their supper, through the bar-room. They acted, as I have no doubt they agreed, or conspired (if Mr. Hardin likes the word), to do, before they left the room. That was to meddle

with nobody, but to defend themselves to the utmost against any and every assault that might be made upon them. And, gentlemen, they meddled with nobody—they assailed nobody —but they *were* assailed, and they *did* defend themselves bravely, nobly, efficiently. I might here ask, why those men remained so long in the bar-room, if there was no concert among them, to make the assault which was so nobly arrested. But upon the subject of the conspiracy, I have said enough, perhaps too much.

Gentlemen, Mr. Hardin tells you that he has lately returned from the State of Mississippi, and from the graphic and glowing description he has given you of the battle scenes he stumbled upon, in a short excursion which he made from Vicksburg into the country, one would be almost tempted to believe that a horror of dirks, pistols, and bowie-knives had seized upon his feelings and distempered his imagination. Hence he can see nothing commendable in the character of the people of that State. He portrays them as irritable, vindictive, and sanguinary—as a lordly people who look down with contempt upon mechanics and the laboring classes of mankind. He kindly supposes in their behalf, that the climate in which they live may produce these obnoxious biases of character.

If they are attributable to the climate, it is unphilosophic to complain of them, for it was settled in the case of Nebuchadnezzer that the heavens must rule. But do the facts, as he has represented them, exist in reality, or are they the offspring of his own heated fancy in this case? He must allow me to suppose them factitious. I, too, visited that State more than once, and continued long enough to become acquainted, to some extent, with the people, their manners, habits, and customs. On my last visit, which was about three years ago, I spent near a month at the seat of government during the session of the Legislature. During that time I saw and became acquainted with many of her citizens, and among others with Judge Wilkinson, and Mr. Prentiss, the gentleman, with the witchery of whose eloquence and power of argument we have

just been delighted, instructed and, let me add, convinced. They were both members, and leading members, of the Legislature. I saw nothing of the ferocious or sanguinary about the people of that State. They treated me with the utmost civility and politeness, and with marked hospitality. The members of the Legislature, and many of the respectable citizens who were on a visit to the capital, overlooking all political party distinctions, united in pressing upon the distinguished stranger (as they were pleased to denominate me), from Kentucky, a most splendid public dinner. Gentlemen, I have been much concerned through life in legislation, and, of course, my acquaintance with political men, legislators and others has been extensive, and I can say that I never in my life saw a more respectable, orderly and intelligent legislative assembly convened, either in my own or any other State; nor did I ever see a more intelligent, polite, hospitable and high-minded people than the people of that State. They detest knaves and cowards, and are prompt to fraternize with honorable men—to support, assist and uphold men of that character, without inquiry into their vocations—mechanics, agriculturists, or laborers, makes no difference with them.

If he be honest and honorable in his transactions, and industrious and temperate in his habits, whether poor or rich, it makes no difference. If poor, they enable him to become rich. Gentlemen, the people of Kentucky should be the very last to make or sanction such imputations against the people of Mississippi; for all Kentuckians of good character who have gone to that State (and very many have gone), have been kindly received, and when they needed, generously assisted with loans, both of money and credit, whereby they have become rich. They went there, most of them, mechanics or laborers; they are now rich planters.

The gentleman says, they look down upon poor mechanics —it is true they do so, but it is to discern their merit; and if they possess it, to lift them up—to elevate, support, and sustain them in their exultation. But the other day they looked *down* upon Mr. Henderson, a shoemaker, saw his merit,

and elevated him to a seat in the United States Senate. But that is not the only instance. They *looked down* upon Mr. Prentiss, who had traveled from the far East, and was engaged in teaching school among them—an *obscure* pedagogue —no, I can not say he was *obscure,* he could not be obscure anywhere—the eruptive flashes of his great mind, like those of Ætna, threw a blaze of light around him which attracted (or rather exacted) their gaze and admiration. They sent him as their representative to the Congress of the United States. Mr. Prentiss must pardon me for thus going into his private history—I was myself an humble pedagogue. The difference in our condition is that in my case the people of Kentucky honored *me;* in his, the people of Mississippi honored themselves. They looked down upon Judge Wilkinson—they discerned his talents and his worth, and elected him to the Legislature, elevated him to the bench, and conferred upon him the commission to negotiate a loan in Europe for the purpose of internal improvement, as you have heard from the proof in the cause. Instances are innumerable—I will not go into detail. But they carry bowie-knives, and the blade of a bowie-knife is so long, and so broad, and the edge is so sharp, and it has such a terrific glitter, that they must be a bloody-minded, hot-headed people. Besides, they fight the most desperate duels. Gentlemen, arms of some kind are worn more or less in all countries.

They are in all countries used by the coward to assassinate, and by the brave for defense against assassins. If you want to put down the use of bowie-knives, extinguish robbers and assassins, and the use will fall of itself. But as long as good men may be assailed in their persons or property, by dishonest and dastardly men, the latter must be allowed the appropriate means of defense; and the arms for defense can not be considered appropriate unless they are at least equal in efficiency to those of the assailants. But the wearing of arms, whether bowie-knives, pistols, or whatever else, does not at all alter the rights of the citizens. For assault they should not be wanted; for defense, when occasion requires, they are of great

value. The right of self-defense remains, under all circumstances, the same. It is a primary element of our identity. Nature gave it—art can not take it away. As derived from nature, it is limited to the use of no particular species of arms, and embraces every species. It is limited only by the obligation of benevolence on the part of the assailed, toward the assailant; and benevolence does not require him to love his fellow man more than himself. A man's right of self-defense does not result from the degree of criminality in the one who assails him. It is personal, inherent, and inseparably united with his *own exclusive individuality*—a person may in many instances exert this right to the destruction of an *innocent* man. A madman, for instance, who is incapable of *crime*, but capable physically of destroying a man, may be slain justifiably, in the exertion of this right—so may a somnambulist, under the same circumstances. In the case of a shipwreck, when two of the passengers are struggling for a plank, which will sustain but one of them; the one may justifiably kill the other to save his own life. This, gentlemen, is the law of nature, in relation to all animal existences, and the municipal law, in relation to man.

Then, gentlemen, why this denunciation of bowie-knives and pistols, for it can make no odds, if the killing was done *justifiably*, whether it was done with the one or the other, or with a simple jack-knife. The question is not whether either, or what weapon was used; but whether with or without weapons, the killing was justified, or excused by the law. All that has been said, therefore, by Mr. Hardin upon the subject of carrying and employing arms, is foreign to this case. It must have been intended *ad capitandum*, or rather *ad exitandum*. Equally foreign to the case is all that he has said about Mississippi, and the Mississippians—whether the killing was done by a citizen of Kentucky, or by a citizen of any other State. The question still is, was the killing *criminal* or *innocent*? That it was innocent in these gentlemen because necessary to protect themselves from a band of conspirators—from a mob—we have urged, and I am now insisting.

But, gentlemen, as Mr. Hardin has spoken so much at large upon the depraving consequences of the habit of carrying arms, let me give you my opinion upon that subject. I am now an old man—I was in this country when every man carried his rifle and his tomahawk, and his knife, wherever he went. He carried his arms to defend himself against the Indians, whose incursions were constantly apprehended—and during all that time there were no homicides—no man killed by his fellow—no man apprehended danger from his fellow man. How happened this? The rifle, the tomahawk, and the scalping-knife, were, at least, as formidable instruments of death, and as depraving as the bowie-knife and pistol; yet it never entered the mind of any one that men were more depraved or more ferocious by the practice of carrying arms. The true reason is, that there was not then in Kentucky a single coward. The men, aye, and women too, were all brave —a coward could not remain in Kentucky. The danger from the Indians was too continuous, imminent and proximate. He could not breast it. He could not bear the scorn and derision of the men and of the women, and children too, and had to leave the country.

After the Indian war had closed—which was in 1794—the people of Kentucky laid aside their arms. People from every quarter rushed in crowds into Kentucky, and jars and bickerings resulted for a time, from the intercourse of people of different habits. They were settled, mostly, by an appeal to the prowess of pugilism. There were some suits of slander, and of assault and battery. Kentuckians gradually amalgamated with the immigrants, and we got along very well for many years—among the professional men there was occasionally a duel. There were no homicides, no assassinations, until the Legislature of Kentucky, in an evil hour, influenced, unconsciously, by a mistaken policy, enacted what is generally denominated the "anti-dueling law." That law required every officer in the State, civil and military, from a constable up to the Governor, including members of the Legislature, and lawyers, and from a Sergeant to a Major General, to swear

solemnly that he would neither give nor accept a challenge to fight with any deadly weapon, within or out of the State of Kentucky. It was a law most evidently for the benefit of cowards, who, without the oath, would never have fought nor accepted a challenge to fight a duel; but who, by the administration of the oath, were palmed upon the community, and upon themselves too, as men of spirit. Before the passage of this law, a man who might chance to be irritated with another, would, before he published a libel or slander against him, pause and reflect, that if he persisted he would be challenged, and *must* either *fight* or be disgraced, and would wisely desist. He knew that the same consequence would follow from any personal violence to which his irritation might prompt him, and the effect was the same. But upon the passage of this law, dastards, when they had taken the oath, or aspired to offices which they could not fill, without taking the oath, filled their bosom with dirks and their pockets with pistols, annoyed society with the insolence of mock heroism, insulted their brave competitors, and when about to be chastised, retreated to the *wall,* and killed the gentleman they had wantonly insulted, *a la mode* Mr. Hardin's law. The vicious and depraved portion of the people having been thus licensed to wear arms, the remaining portion were constrained to wear them in self-defense.

The consequence is, that the community has been very much annoyed, and vulgarized by the short-sighted policy of the Legislature. Sirs, the duel was in the times I speak of, and had been for ages throughout the civilized world, not only the most effectual polisher of manners and morals, but a most efficient, though sad, peacemaker. It held all who aspired to be gentlemen, and were of course amenable to its tribunal, under a strong recognizance for their good behavior. It is a tribunal instituted by nature, as an auxiliary, to the political institutions of society. It was a misdirected humanity which influenced Kentucky, and the States of the Union who, following her example, have attempted to suppress it. The object was to prevent the effusion of blood. The effect

has been to increase it tenfold. Just as the legislation to repress gaming by fines and penalties, has increased it one hundred fold, when a short act, making all sums *fairly* won, recoverable by law, would have diminished the evil, and improved the morals of the people.

Do not mistake me, gentlemen, as to dueling: I am no advocate for it. I would not sanction it by law, but I would reluctantly connive at it as an evil less, greatly less, than that legion of evils which supply its place. As I prefer a high and honorable to a low and degraded spirit—fair, open, manly and honorable conflict to dastardly and cruel assassination, so I would leave it, as England and all wise nations have it, by reluctant connivance. Perhaps my notions upon these subjects are erroneous, but they are my deliberate views, and I do not wish to conceal them. Every duel is a lesson, more or less impressive, as it shall eventuate in favor of good morals and polished manners; and although the fall of one or both of the combatants must inflict pain and sorrow upon their immediate connections, yet the effect is wonderfully beneficial to the community in every view, and strengthening to virtue. The price paid by the community is very great, but the purchase is inestimably valuable. The good effects of this lamentable practice can not be obtained at a less price, nor in any other known mode; nor can it be suppressed by human legislation.

But, gentlemen, to return to the case from which I have been diverted by Mr. Hardin's discursiveness. I trust you have been satisfied that the accused were assailed by a band of conspirators, and that they were justifiable by the law of the land in acting as they did, and leave that part of the subject with you.

Mr. Hardin's conspiracy, on the part of the defendants, is too unfeasible and preposterous, to require further notice, than has been wasted upon it. Indeed, it is unworthy of the attention it has received; I therefore dismiss it also—and will now consider the case of the defendants (for argument sake) as though there had been no conspiracy against them, upon

the insulated ground of self-defense. I will suppose that they entered the bar-room, on their way, and by the *public* way (like other citizens and boarders), to the supper-table, and that immediately upon their entry they were assailed respectively, as it has been proved they were. The question is, was Mr. Murdaugh justifiable in taking the life of Meeks, and was Judge Wilkinson justifiable in taking the life of Rothwell?—for, against the doctor there is no proof. The proof in reference to what Rothwell was doing when he was stabbed by the Judge, is not entirely free from apparent discrepancy. Mr. Pope says, he (Rothwell) was standing close to where Dr. Wilkinson was lying on the floor, under the blows of Holmes and others; that he was apparently leaning over the prostrate doctor, when he was stabbed by the Judge; Mr. Hardin would have you believe, that his proximity to the doctor, and his stooping position over him, were produced by his endeavoring to pull Holmes off the doctor and release him. But Pope tells you that he was among the first to assail Murdaugh, with his club. In that he displayed no amicable, or pacific disposition towards the doctor, for it is evident from all the testimony, that his feeling towards Murdaugh, may be fairly taken as the *sample* of his feeling towards each of the others. He did not attempt to rescue Murdaugh from the rush that was made upon him; on the contrary, he struck him with his cudgel. It was not, therefore, to release the doctor from the giant grasp of Holmes, that he was leaning over him. For what then, gentlemen, let me ask you, was he standing stooped over him? General Chambers gives the answer. He had struck the doctor with his hickory stick, and was balancing it in his hand to repeat the blow, when the Judge stabbed him. General Chambers did not speak of his stooping, yet he may have been, and probably was stooping, as Mr. Pope states, and the General not have noticed it. Pope may not have noticed the stick in his hand and the stroke inflicted with it upon the doctor just before he was making the effort to readjust his grasp of it for another blow. To strike the doctor, who was lying on the

floor under Holmes, he must have stooped, to avoid striking Holmes. Pope saw him standing near the prostrate doctor, but did not see him strike, nor did he notice the stick in his hand. General Chambers saw him in the same position (with the exception of the stoop) strike at the doctor, and preparing to strike him again—they both saw the stabs inflicted. The testimony then of both the gentlemen is correct, and may be easily reconciled. They both saw the same transaction, but did not both see all of it. And the testimony of each, instead of contradicting, corroborates that of the other: —much took place in that scene, which was not seen by anybody, and much of what was seen, was seen imperfectly, amid the turmoil and confusion, and apprehension which the affair produced—some things were seen by one and not by another—and some important facts were not seen by any. Mr. Raily, who was a stranger to all the parties, saw some man striking with a sword-cane—who struck, or who was struck with it, he did not know; but he saw the scabbard end of the cane fall off and leave the sword bare. No other witness saw that. Judge Wilkinson was stabbed in the back obliquely, between the shoulders, to the depth of three inches, with an instrument *narrower* in the blade than any weapon known to be employed on that occasion, unless it were the sword-cane. The wound, according to the opinion of Doctor McDowel, who examined it, looked as if it might have been made with such a sword—such, too, was the character of a wound which Rothwell had received in his breast, and nobody knows how, or from whom he received it; and which, according to the testimony of the doctors, was the *immediate* cause of his death. Judge Wilkinson, too, received several blows, as was apparent from contusions on his face and head; and yet, with what weapon, or by whom inflicted, nobody knows but he or they who inflicted them. I mention these facts, gentlemen, to show you that as much occurred which was not seen at all; so, of what was seen, many parts might have escaped observation or been seen very imperfectly. All the witnesses, however, saw that the doctor was knocked down and beaten most unmercifully.

Oldham claims the credit of knocking him down—Holmes is proved by all who saw the transaction, to have been upon him and engaged in beating him, assisted by Rothwell, when the latter was stabbed by the Judge. Halbert claims the credit of having contributed several blows. You see what a giant Oldham is, and it is proved that Halbert and Holmes were larger, and Rothwell as large as he, and all of them at least as stout—can you hesitate to believe that the doctor must have perished under their violence, if the Judge had not come to his rescue at the very moment when he stabbed Rothwell? Holmes was also stabbed with a bowie-knife through the right arm—the Judge only used a knife of that kind on that evening, and, therefore, must have stabbed Holmes, though nobody saw him stabbed, or knew who stabbed him. By the use of his bowie-knife upon Rothwell and Holmes, he saved the life of his brother, and in all probability his own life and that of Murdaugh.

It is very probable, that, infuriated by the death of Meeks, they would, with the aid of their maddened associates, have killed the Judge and Murdaugh, as well as the doctor.

But it is contended by the Counsel for the prosecution; first, that the doctor's life was not in danger; and, secondly, that if it was, the Judge could not lawfully kill the assailants to save his life. Upon the first of these points, I will not detain you. It is a matter upon which you have heard the evidence, which all converges to prove that his life was in imminent danger, and that it was only saved, as I have stated, by the seasonable and intrepid interposition of the Judge. He had been already beaten to a mummy, and was, at the instant of his rescue, being farther beaten by the cudgel of Rothwell, and the ox-like knuckles of Holmes. The second is a matter of law upon which I did not suppose there could have existed a doubt in the mind of any lawyer, nor, indeed, of any human being of properly organized medriff; for it seems to me that nature proclaims in the unvitiated feelings of every man's heart, what the law is upon this subject—the lecture given by the father to his sons, and illustrated by the

bundle of rods in the spelling book of Old Dilworth, inculcates the true law upon this subject. But, gentlemen of the jury, let me call your attention to the law of England; and of this country; and of all communities, barbarous, as well as civilized, upon the same point; for it is a law of nature, and of course universal: In Blackstone, 21st n. p. 184, speaking of the right of *self-defense,* that author states that "they cannot, therefore, exercise this right of preventive defense, but in sudden and violent cases, when *certain* and *immediate suffering* would be the consequence of waiting for the assistance of the law"; and having in the next page laid it down as a law of universal justice, that a man, when the attack is so fierce that he cannot retreat without manifest danger of his life, or *enormous bodily harm,* may, in his defense, kill the assailant *instantly.*" In page 186, he states, that "under this excuse of self-defense (referring to the law I have read), the *principal, civil* and *natural relations* are comprehended; therefore, master and servant, parent and child, husband and wife, killing an assailant in the necessary *defense* of each other respectively, are *excused*; the act of the *relation* assisting being construed the same as the act of the party himself." Now, I ask, if the relation of brother with brother, is not a *natural* relation? If it is, then it is comprehended in the law I have just read to you from Blackstone. The counsel for the prosecution seem to think because this relation is not specifically named by Blackstone, that it is not within the principles laid down by him. They have *erred* (they will pardon me) in construing his words.

There are but two kinds of relationship which can exist among mankind. The first is the *natural;* the second, political or civil. The author illustrates the last, viz., the civil, first, by the example of master and servant; and the *natural,* by the examples of parent and child, husband and wife. He does not pretend to enumerate all the relations of either kind, but gives examples, *one* of the *civil,* and *two* of the *natural.* They outrage nature by giving to the artificial relation of master and servant the ascendancy over the natural and en-

dearing relation of brothers and sisters with each other. I say they outrage nature; for what man in his senses can believe that the servant is under greater and stronger obligations to defend the master, and the master the servant, than a brother is under to defend his brother or his sister? Feeling, it would seem to me, decides the question at once by intuition; but upon the supposition (for argument), that my interpretation of Blackstone is wrong, still the gentleman will have gained nothing, for the relation of brother with brother is at least a *civil* relation. A brother, in the absence of other heritable relations, can, under the law of the land, inherit the estate of his deceased brother. But I go farther, and assert that the relation of citizen to citizen is a *civil* relation, within the meaning of Blackstone, and a mere citizen may, to save the life of his fellow citizen, slay the man who assails it. And I will add to authority of Blackstone that of Lord Hale. That great and good judge, in the first volume of his Pleas of the Crown, at page 484, speaks thus upon this point: "If A, B and C be of company together and walking the field, C assaults B, who flies, C pursues him, and is in danger to kill him, unless *present help.* A thereupon kills C in defense of the life of B. It seems that in *this case* of such inevitable danger of the life of B, this occasion of C, by A, is in the nature of *se defendendo,*" etc. And again, the author in the same page proceeds, "If A be traveling, and B come to rob him, if C fall into the company, he may kill B in defense of A, and, therefore, *much more* if he come to *kill him,* and such his intention be apparent. For in such case of a felony attempted, as well as of a felony committed, every man is thus far *an officer,* that at least his killing of the *attempter,* in case of *necessity* puts him in the condition of *se defendendo,* in defending his neighbor." So you see, gentlemen of the jury, that the counsel for the prosecution have misconceived or misrepresented the law. I hope they misconceived it. Let me refer you to a law from recollection, not under the denomination of *a law,* but *a fable.* I read it when a boy in Dilworth's spelling-book: "Two friends" (I quote from mem-

ory), "setting out on a journey together, agreed, in case of danger, to stand by and assist each other. They were assailed by a large bear. One fled and climbed a tree. The other, not being able to escape, nor, alone, to defend himself, fell down and pretended to be *dead*. The bear came up and smelled him, and from his silence and motionless posture, supposing him to be really dead, walked off and left him unharmed. When the bear had disappeared, his companion descended from the tree and asked him what the bear had whispered in his ear, he replied that the bear had cautioned him against confiding (through the balance of his life) in the promises of a *false friend.*" This fable inculcates the same principle of natural and municipal law, which is promulgated in the passages from Blackstone and Hale, which I have just read to you, namely, that you may justifiably, nay, that you ought to defend the life of your fellow-citizen by taking the life of him who attempts to destroy it. Hence, I argue, that it was not only the right, but the duty, of each of these three gentlemen, who were friends in their own State, and in their travel to this State, to defend the life of each other by taking the life of those who assailed it.

Suppose they had traveled by the old route from the place of their residence to this State, and had been assailed by the same persons, with the same violence and ferocity, at an intermediate tavern, instead of at the Galt House. To make the case stronger, suppose that tavern had been in the wilderness, within the Indian territory, where there was neither government nor laws, might not the Judge in that case have defended the lives of his friends and associates? They will perhaps yield that he might, because of the absence of legal protection. I reply that if he might on that account, his right to do so, must be derived from the law of nature, and government leaves all her citizens in the full possession of the natural right of self-protection, where she can not or does not protect them. Well, at the Galt House they were as unprotected by the laws as they would have been in the case supposed; therefore, both by the municipal law and the laws

of nature, the Judge had a right to kill Rothwell to save Dr. Wilkinson from great bodily harm, or the loss of his life, even if he had been unconnected with him by the ties of brotherhood; and, therefore, each might have destroyed the assailant of the life of the others. And if the party assailing them were acting upon concert between themselves for that purpose, each of the assailed might, the moment one was assailed, have killed as many of the conspirators as he could, and he would have been justified by law in doing so. But I have spoken of the conspiracy, and am considering the cases, as though none had been formed. When the person assaulted *honestly* believes that his life is endangered by the assault, he may kill the assailant. The law to that effect has been read by Col. Robertson and stated by Mr. Prentiss. Mr. Hardin scouts at this statement of the law, and ascribes to the inexperience of the young man, as he is pleased to style him, his erroneous notion of the law. Gentlemen, you find it both in words and import as Col. Robertson read and as Mr. Prentiss has stated it.

It could not in the nature of things be otherwise; the man assailed has not time under the pressure of the assault, to consult others as to the degree of danger to his life resulting from any particular stage of the assault, or degree of its violence. No one else could judge so well, no one so much interested in judging correctly as himself; he might lose his life by intermitting his defensive energies, while he sought the opinion of others—his life was committed by nature to his *own* protection, to the protection of his *own mind* and muscles, and not to the opinion of others. And man, I repeat, in the absence of the protection of the law, continues, in this respect, in the condition in which nature placed him. It is upon the *honest,* not *feigned* belief of *danger* to his life, or of great bodily harm that he may destroy his assailant. Mr. Hardin says, it will not do that the assailed honestly believe the danger to be present and urgent, it must be really so. Let me suppose a case. A and B quarrel, high words pass, A swears that he will kill B, draws a pistol from his

pocket, and presents it cocked to his breast; B instantly thereupon draws his pistol, and shoots A through the heart, and upon examination it turns out that the pistol of A was empty when he drew it and presented it to the breast of B. In this case it is evident that B was in no *real danger*, from the pistol of A. Shall B be condemned and executed for the murder of A because his *life* was in *no real danger*, or shall he be acquitted upon the ground that *he believed* his life to be in *danger* from the pistol of A, and therefore justifiable in killing him under that belief? Can any man, even Mr. Hardin, entertain a doubt upon this case? Mr. Prentiss, therefore, stated the law as it really is, and as it must from the necessity of our nature, always continue to be.

Men are not equal in moral and physical courage; a timid and a brave man would destroy their assailants upon different degrees of danger, the former upon less imminent danger than the latter, but each upon an *honest belief* of its threatening imminence, upon an *honest belief* that his life was in danger; shall the one expiate the weakness of his nerves upon the gallows, while the other is justified, and applauded? Each was under the same obligation to preserve his life, and each exercised honestly all the faculties with which the great author of life had endowed him. The doctrine of Mr. Hardin is at war with the nature of man, and the principles of his social condition. Then if Judge Wilkinson believed honestly that his brother was in danger of great bodily harm, or of losing his life from the assaults made upon him, he had a right to kill the assailants, even if the danger were not as imminent as he supposed it to be—for a person who kills the assailant of his relations, stands in contemplation of law, in the place, the assailed would have stood himself, had he killed the assailant. But why talk of the belief of danger in this case, when there is no reasonable man who has heard the testimony can doubt of its reality? The Doctor had already, when rescued by the Judge, suffered enormous bodily harm. He had been deprived of the power of self-defense, and was falling an easy victim to the violence

which Holmes, Rothwell and Halbert were inflicting upon him. Rothwell had struck him with the club, as General Chambers proves, and was stamping him with his feet, as Mr. Pearson proves, when the Judge stabbed him. But Mr. Hardin thinks he should be punished for stabbing him in the back. *The gentleman has high notions of chivalry,* and is shocked at its violation in this instance by the Judge. He forgets that this assault was not commenced in a chivalric spirit, nor upon any principle of *fairness* known to chivalric men.

When the Judge came to the relief of his brother, that brother *one* and alone, was under the fists, feet and clubs of *three* of the largest and stoutest men in the State; and yet Mr. Hardin will have it that the Judge should have waited until the three had killed his brother, and until it was convenient for Rothwell thereafter to present his breast. Or, perhaps, according to Mr. Hardin's notion of gallantry, the Judge should have asked him to present his breast, that he might approach him *a la mode.* If such be his taste, he may consider the first thrust to have been an efficient request to that effect; and the second to have been made when he had, according to the intimation of the first, turned towards the Judge, to inquire into its meaning. But a sufficient excuse to the cavilings of Mr. Hardin upon the point of mobocratic chivalry is that the Judge was inexperienced in broils, knew nothing of either their practice or theory, that his education and habits of life were anti-pugilistic. He had neither muscular aptitudes nor mental aspirations for distinction in that line, and if he had possessed all the excellence in chivalry of which Mr. Hardin can conceive, the occasion did not afford an apt theater for the display of it. And, again, he was acting under the spur of relentless necessity, which left him no choice of modes of action, no leisure for the observance of etiquette. He had but one purpose, and that was to save the life of his brother. That object he achieved with the greatest possible economy of the blood of the aggressors. He might justifiably have slain with his bowie-knife many others,

and it is wonderful, under the circumstances, that he did not. It is evident, from the proof, that he did not aim to hurt any but Rothwell and Holmes, and it is equally evident from the proof that by killing one and wounding the other he saved the life of the Doctor, and very probably his own life, and that of Murdaugh.

Gentlemen, I have not called your attention to the proof in detail—I shall not attempt to collate and analyze it. That task has been performed ably and eloquently by the gentlemen whom I follow on the same side. You must have perceived the artifices by which Mr. Hardin attempted to evade and blunt the force of the testimony of many of the witnesses on the side of the defense. You could not fail to observe, and I hope with indignance, his attempt to disparage those of our witnesses whose testimony he could not twist to his purpose. Let me call to your recollection the instance of Doctor Graham, a gentleman of known integrity and high standing in your county. The testimony of that witness satisfied everybody who heard it that the accused were assailed ferociously, and placed under the necessity of acting as they did. How did Mr. Hardin dispose of it? Why, by telling you that he is the owner of the Greenville and Harrodsburg Springs; that the Mississippians spend their money freely, and that it is a great object with the doctor to conciliate them and get their custom. Mr. Raily, who is as respectable a man as any in the community, and as respectably connected as any man in Virginia or Kentucky, whose father was full cousin to Thomas Jefferson, and whose high intelligence was evinced by the clear manner in which he gave his testimony, is branded by Mr. Hardin with cowardice, because he told you he ascended when the affray commenced to the sill of one of the windows upon which being an entire stranger he stood and looked on. Mr. Hardin derided that act of prudence, as an act of embarrassed timidity, and compared him standing there to a turkey-buzzard perched on the top of an old dead tree. General Chambers, whom he knew to be an honorable, intelligent and upright man, and one who would not be very patient

under any disparagement, he prudently passed. In the same way he passed Mr. Pearson, a gentleman of cultivated mind and manners and of unimpeachable integrity; and then again he selected Mr. Trabue as a man of such iron nerves that he could look upon blood and carnage with the composure of a stoic, and urged you to regard him and Mr. Pope as the only witnesses who were composed enough to observe calmly and accurately the actings and doings of those concerned in the horrific scene; and thereby intimating, by implication, that Montgomery, Chambers, Graham, Pearson and others, were so embarrassed and confused by their fears as to be incapable for the time of correct observation.

I barely mention these things to show you that his zeal to convict the accused displays itself vindictively, in some way or other, towards all the witnesses whose testimony thwarts his main purpose. I fear none of the testimony, and wish you to consider it all, and give credit to as much of it as you can. I have before said all I mean to say upon the credibility of the witnesses. It is not agreeable to me to awaken unpleasant sensations in witnesses by unkind comments upon their evidence, and therefore I forbear to comment upon that of Redding, Johnson and Oldham.

Gentlemen of the jury, I leave Judge Wilkinson with you. I have not been as much concerned about the legal as the moral aspect of his case. His is not a common case, for in common cases a mere *legal acquittal* is the desire of the accused and the aim of his counsel; but to a high-minded, honorable man, like the Judge, a mere acquittal upon the dry law of the case has but little to recommend it. A gentleman who would at any and all times sacrifice his life to preserve his honor, can be but little pleased with any efforts of his counsel which, by overlooking his honor, aim at saving his life. My aim (and such I am sure has been the aim of his counsel who have preceded me), has been to manifest to you and to the public that Judge Wilkinson and his friends have, throughout this unhappy affair, acted up to the most punctilious requisitions not only of natural and municipal law, but of the strictest

honor and sternest morality. We have entertained no fear of a conviction throughout the case. We represent men who do not place a very high estimate upon *mere animal life* otherwise than as it subserves the higher purposes of human existence—men whose lives are in their *honor,* and can only be reached by sullying it—and I have dwelt longer on the Judge's case in the view to rescue him from the slurs attempted to be thrown upon his honor by the imputations and envenomed innuendoes of Mr. Hardin than for any other purpose. The case of each of the three is, in its *legal aspect,* the case of all; for they were all assailed by the same vile coterie, and for the same nefarious purpose, and they all resisted with a bold and unquailing spirit, each as he best might under the circumstances of attack. The act of each necessarily tended to the protection of all, and none had cause to reproach the other with the want of energy or spirit.

Let us pass from the Judge to Mr. Murdaugh, and in doing so we pass over the Doctor. There is no proof that he uttered a word, and it is abundantly proved that he was disabled by brutal violence from performing an act in this drama. Let it be remembered to his credit that he did not quail—he did not supplicate the merciless mob, and would have died in dignified silence had he not been bravely rescued by his brother. Mr. Hardin says of Murdaugh, that when accosted by Redding he held up his hand, showing to all the blade of his white-handled knife, and declared with an emphatic oath that he would kill any man who laid hands upon him. This conduct, he thinks, evinced a sanguinary intent—a bloody purpose. No doubt of it; but it was a purpose of defense, not assault. He did not conceal his knife to plunge it by surprise into the breast of the first assailant, but openly and bravely showed it to all, and warned them at the peril of their lives to stand off.

But Mr. Hardin finds in his reply to Redding, namely, that if he or any other man said that he had drawn a bowie-knife upon Redding in his shop, he told a damned lie, the same, or rather a continuation of the same evil spirit which he had

evinced in brandishing his drawn knife. That he evinced in the latter, as in the former instance, a brave and determined spirit, I readily admit; and the mob who assailed him were silly not to have perceived and been restrained by it. It was a fearless and defying spirit which he was happy in possessing and wise in displaying—a spirit which, instead of thirsting for blood, panted to avoid the effusion of it. Gentlemen, all that is ascribed to Mr. Murdaugh by Mr. Hardin, according even to his most unjust interpretation of it, did not justify the assault made upon him by the unfortunate Meeks and Rothwell. Words do not, in law, justify blows. They, however, according to all the testimony, made the assault upon him, before he had done anything towards them more than to warn them what would be the consequence in case they did assault him. But the nature of the assault did not, in the opinion of Mr. Hardin, justify him in the defense which he made. Meeks seized his knife-hand and commenced cowhiding him, while Rothwell belabored him over the head with a large hickory club, gashing his head at each blow, as you perceive by the scars. Where now is the spirit of chivalry which produced in the mind of Mr. Hardin such strong reprobation of the stroke which Judge Wilkinson gave Rothwell? Was it chivalric for the two—Meeks and Rothwell—to beat Murdaugh, *at the same time*, one with a cow-hide and the other with a cudgel? The one to hold him by his knife-hand and degrade him with a cow-hide while the other was beating him to death with a club, and others (for such is the testimony) beating him with their fists? Surely this was not only cruel, but cowardly—especially in the opinion of so gallant a knight as Mr. Hardin—but according to the views of that gentleman, Mr. Murdaugh should have *run* as far as he could before he killed his assailant, and he did not attempt to *escape* by *running*.

He read you the law to that effect from Blackstone. Gentlemen, I have always contended that the law which he has read, and which I admit to be the law of England, should, though adopted by our constitution, be construed *by us* ac-

cording to the genius and spirit of *our* free institutions. It should not *here,* where we are all equal, and where there is no distinction but that which exists between the good and bad, be construed to require a man *to run* from his fellow man, for with us a *free man* has no *superior.*

"The laws of several nations," says my Lord Hale, in Vol. 1, p. 489, "in relation to *crimes and punishments differ,* and yet may be excellently suited to the exigencies and conveniences of every several State, so the laws of England are *suited to the conveniences of the English government,*" etc. And even in England, in some cases, they give to the law the construction for which I contend; even there when one man assails another upon the King's *highway* the assailed need not retreat or run. Every law should be interpreted not only according to the nature and genius of the government, but to the circumstances in which the accused is placed at the time. The reason he need not run *there* is because he is on the King's highway, and authorized by the *virtual* presence of His Majesty to protect himself as fully as the King, were he *really* present, could protect him. Gentlemen, the *free citizens* of America are as much authorized in every part of the Republic to defend their lives as the *subjects* of the King of England are upon His Majesty's highways. The *paths* of *freemen* are all sovereign highways or the highways of sovereigns. Freemen are always in the real presence of majesty—they are themselves *in loco regis.* They are themselves sovereigns, and there never was a law which required a sovereign to run from a sovereign. The very idea is absurd. Another reason why the law of England requires a subject to run when assaulted out of the real or putative presence of the King, is that *there* the *man* is sunk and merged in the *subject.* Here with us the man is exalted to the sovereign —every freeman has around him a zone of inviolability, an odor or aroma of sovereignty. There, there is a graduated series of subserviency in the organic structure of the government, from the King down through the *titular ranks* to the lowest vassal. *Here* there is, as I have already told you, no

disparity between men. There the King is the fountain of all honor and possesses exclusively all the attributes of sovereignty. Here the people are the fountain of honor and the sole sovereigns. There the subject may be degraded without dimming the luster of the diadem—here the citizens can not be degraded without sullying the sovereignty of the nation.

How long, gentlemen, think you, would the freedom of the people last, after they had been fully trained to *running* (according to Mr. Hardin's view of the law), each from the other? But *cui bono* require him to run? for when his flight is impeded by a wall or any other impediment he may slay his pursuer. Why may not his honor, the spirit of freedom, and the pride of his own conscious self-worth, constitute the wall or impediment? Can it be expected of men whose spirits have been trained to run from their equals, who have *no honor of their own,* that they will rush to the standard of their *country's honor?* But what is their country's honor? In what does it inhere, and where is it garnered up? Let the gentlemen answer me these questions, and then tell me that when he is exposed by the assault of his fellow-citizen to the danger of losing his life, or of great bodily harm, he should run from his assailant.

Sirs, the honor of the country is garnered up in the breasts of her citizens. It is the oxygen gas that sustains, animates and warms their souls, and spurs or allures them on to enterprises of goodness and of greatness. It is a sparkling nectar quaffed only by *freemen.* It is the elixir of moral life. Gentlemen, be assured that the man who will run from a domestic, will run from a foreign enemy, for man is a unit. Teach him by your laws to run away and you will in vain expect him to advance upon his country's enemies. In England the King makes war at his pleasure and fights through it with an army of vassals reduced by discipline into a mechanical compaction. There, the army is a mass of automatons, a mere machine. Here, the people declare war and fight through it with armies of freemen. There, the sovereign declares war

and fights its battles with armies of vassals. Here, the sovereigns declare war and themselves constitute the soldiers who fight its battles. *There,* bravery or cowardice in the soldiery is a matter of indifference. *Here,* bravery in the soldiery is essential—is a *sine qua non* to success. Is it wise, then, I would ask you, gentlemen, to construe our laws so as to enfeeble or extinguish this spirit of our citizens—a spirit upon which not only our free institutions but our very independence as a nation depends? What would we say of the wisdom or foresight of the farmer who, instead of destroying the weeds which infested his corn as it grew in his field, would destroy his corn and leave them to grow and flourish? But this construction of the law for which I am contending is not necessary for the justification of Mr. Murdaugh. His case does not need it. He was so hemmed in by the conspirators and the bar that he could not run if he *would,* and my word for it he *would* not if he could. Gentlemen, these three strangers are not of the running blood. They are not from a State where the running breed is much esteemed—where that spirit is countenanced and propagated. The State of their residence is not yet old and degenerate enough to patronize that description of men; besides, the sun, whose influence is mighty in the concoction of the fluids of animal as well as vegetable life, does not in that climate much favor the concoction and growth of dastardly spirits. But he could not, gentlemen, as you must be convinced, have even given back.

He did all that he could, and more than many men would have done; for, under the lash of the cow-hide, and the blows of the cudgel, and fists of his assailants, he took the knife out of his right hand which was held by Meeks, into his left hand, and by such exertions as he could, with it extricated his right hand from the grasp of Meeks, and with it resumed the knife, and by killing Meeks rescued himself from the vile band of conspirators who had assailed him, and thus saved his life. Was he, under the facts of the case, justifiable in doing so? Could he have done less, or having done less, could

he have saved his own life? I think I hear each man of you say to himself that you applaud him for what he did, and only regret as good citizens that from his feeble structure and the overpowering odds against him he was unable to have done more. I predicate my supposition of your regret that he was unable to do more upon what I know to be the abhorrence which every good man feels of lawless conspiracies and of mobs. Mr. Hardin has charged a mobbish spirit upon the Mississippians. He has overlooked the mob against the Ursuline Nuns, in the land of steady habits, and the frequent and triumphant mobs in New York and Baltimore, and fastened his eye upon the mob which took place at Vicksburg some years ago. He multiplies that into many, and clothes it with terrific horrors.

With him I reprobate all mobs, but I detest more especially those that are formed against helpless innocence, as in the case of the defenseless Ursilines, or against the tranquillity and good order of society, as in New York and Baltimore; but it is the province of intelligence to analyze and graduate even crimes. I conceive that there were some palliating circumstances in the affair at Vicksburg. It was not a deliberate, cold-blooded conspiracy of the *bad* against the *good citizens* of the place. It originated in the sudden and misguided zeal of orderly citizens against a conspiracy of gamblers—it was an evil not unmingled with some of the elements of virtue and goodness. Those gamblers had killed a native citizen of Kentucky, who was a stranger there, enjoying the hospitality of the place. Irritated with their vocation, and excited to madness by the tragic manner in which they had violated the laws of the land and principles of hospitality in the assassination of Doctor Bodly, suddenly, and in a paroxysm of resentment, they hung some two or three of the gamblers. Judging, therefore, of the Vicksburg mob from its object and its cause, I find in it many mitigating circumstances; but am far, very far from approving it. I repeat that I reprobate all mobs—even those which are raised and exerted on the side of virtue and the laws—but

what has that mob to do with this? How can it mitigate the conduct of the mob in this case, or aggravate the condition of the defendants? Does the gentleman wish you to appease the *manes* of the *gamblers* who perished in that case by sacrificing the lives of Messrs. Wilkinson and Murdaugh in this, because they are Mississippians, though not residents of Vicksburg? Or is he attempting to palliate the foul conspiracy in this case by offsetting it against that, and thereby to weaken the defense of the accused? That can not be his object—it would be too absurd. His object must have been to excite your indignation against the conduct of the Mississippians in *that case,* and transfer the odium of it to the accused because they are from that State.

But let me tell him that if he hopes to gain anything by exciting the passions of this jury he miscalculates. He is not now amid the fervors which this case excited where it happened. He can not here produce the volume of passion which the false and erroneous misrepresentations of the conspirators produced there, and to the propagation and extension of which, he, by the force of his acknowledged talents, exerted before the examining court, contributed. *Here* he can not, as *there* he did, to a considerable extent, excite the mechanics and working classes against the gentlemen slave-holders and cotton-planters. Thanks to a just Legislature, we are now before a tribunal uninfected by passion and without any predisposition to take, even by contagion from him, the maddening infection.

He can not hope to disparage the accused before any rational tribunal by inveighing against the habit of wearing arms. Strangers and travelers have been allowed, in all countries and by all people, to wear them—and even citizens of the meekest and purest character have worn them in their own country, aye, and used them too, upon occasions far less urgent than that of the accused. It is wise sometimes to wear them in large commercial cities. Even in Louisville it is prudent for strangers to wear arms. The knives of the defendants saved their lives at that place beyond doubt. Now

the resident population of that city is as worthy, as peaceable, and as orderly, as the people of any place whatever; but there is there, as in all other commercial cities, a floating mass of people who prowl the streets, especially at night, from whom all who might be supposed to have money or other valuables have much to apprehend. When I say the wise and meek have carried arms, and used them too, I allude to the Apostles—you all remember that the Apostle Peter drew his sword and smote off the ear of the high priest. This is an instance in which arms were not only worn, but used to protect a friend.

Gentlemen of the jury, I repeat what I said before, that the wearing of arms by citizens within the jurisdiction of their State, and in the bosom of society, is an evidence of the weakness and degeneracy of their Government. The object of Government is to protect the good and the virtuous against the bad and the vicious portion of mankind. When the *good* wear arms it is evidence that they can not confide in the Government for protection, and are obliged to rely upon their own vigilance and energies to save themselves from the bad. And whenever good men use their arms efficiently and successfully, and tragically if you please, against the mob or a conspiracy by which they are assailed, instead of the animadversion of the Government they are entitled to its thanks and its gratitude.

Sirs, I speak the language of soberness and truth when I tell you that the fall of Meeks and Rothwell, which we all deplore, by the arms of the assailed, has done more, by tenfold, to repress and put down mobs and conspiracies in Louisville, and throughout the State of Kentucky, than the execution of those ill-fated men by the Government for the killing of one or all of the accused, had the accused fallen by their hands. There would be no mobs if it were certain that one or more of those who form the mob would certainly be killed. The principle of combination in a mob is, as I have before told you, *cowardice*. Each would *fear* that *he* might be slain, and thus, and for the same reason, every

other man of them would abstain from the combination. Those assailed, therefore, by a mob should be considered by the people of every State as authorized by the Government to kill as many as possible of the assailants; and so, indeed, they are to be considered, under a wise and just interpretation of our laws, which, when they can not protect the citizen, leave him to protect himself under the paramount authority of the law of nature.

I say boldly, but calmly, that Murdaugh and the Judge are entitled to the commendation instead of the reprehension of all good men, who believe as I do, and I am sure you must, that they acted each in defending himself and friends against the assaults of an infuriated mob—but I was speaking of the case of Murdaugh, so far as it presents itself as an individual case, and urging that in view of the position he occupied, and the aggregate force and physical violence with which he was assailed, he was strictly, and under the sternest construction of the law justifiable in killing the unfortunate Meeks.

And, gentlemen of the jury, I can not pass over a fact in this case, to which I have as yet paid no special attention; I mean the attempts to degrade Mr. Murdaugh, and with and through him, the Judge and the Doctor, by the stripes which Meeks repeated upon him with the cow-hide. Recollect the testimony of Oliver, from which it appears that such was the determination of the conspirators to degrade, as well as beat the accused; that Meeks prepared the cow-hide for his grasp, by knotting the small end of it. You can not doubt, but that it had been settled by the conspirators that he was to apply the cow-hide to their backs while they used their cudgels, knives, and other weapons in protecting him while going through the process. Hence the rush of the conspirators around Murdaugh when Meeks had seized his knife hand, and commenced upon him with the cow-hide, and hence the readiness with which he surrendered to Oliver the knife with which he had armed himself before the task of using the cow-hide had been assigned to him. And hence it was that *he* was selected to use it, being the *smallest man* among them, to en-

hance, by his *smallness* of stature, the contemplated degradation.

Now, gentlemen, Mr. Hardin, a Kentuckian, tells a Kentucky jury, aloud too, in the hearing of perhaps a thousand Kentuckians, and, what is more astonishing, in the presence and hearing of near two hundred ladies, matrons and maids, that Mr. Murdaugh was in no danger of being *hurt* by a *small cow-hide* in the hand of a *small man*—that he was in no danger of being wounded, maimed or killed by the cow-hide, and that therefore he had no right to kill Meeks for applying it to his back; and he quotes the aforesaid law of England, which requires a *liege subject* to give back, and flee from his fellow-subject until obstructed by a wall, or some insuperable impediment, before he kills his assailant, and then he can kill only to save his own animal life, and not the life of *himself* from the degradation of being cow-hided!!! Sirs, how did you relish the law and the reasoning of Mr. Hardin upon this subject? Do you believe with him, that the man, like the hog, consists in mere animal structure? that, like that animal, he suffers only from violence, inflicted upon his natural organic nature? that his pleasures and his pains consist alone in animal sensation, and that all the attributes of excellence in his character are essentially in bone and muscle?

Ask any of those matrons, who adorn the bench above you, what she would think of a young man who was addressing her daughter, with his back striped by the prints of the cow-hide? Ask her daughter what she would think of such a suitor! Can you doubt the reply? Would not such a man be loathed and scorned by both mother and daughter? Sirs, there are sins against individuals as well as sins against Heaven, which can only be expiated by blood—and the *law of Kentucky* is, that the man who is attempted to be *cow-hided,* not only *may,* but must, if by any possibility he can, *at the time,* kill the man who attempts thus to degrade him. I do not refer to a law of Kentucky, enacted by the Legislature of the State; I mean a law paramount to any enacted by

the Kentucky Legislature—a law that emanates from the hearts of the people of Kentucky and is sanctioned by their heads—a law that is promulgated in the *os ad cœlum* of every Kentuckian, and proclaimed in the sparkling of every eye of both sexes and all ages—a law, the force of which every one feels, the import of which every one perceives by intuition. It is a law of *Kentucky instinct.* None are so ignorant as not to know this law; few are so dastardly as to deny its injunctions.

Gentlemen, in Kentucky, as in all the slave States, the cowhide has a meaning and associations which are not known in England and those of our own sister States where slavery does not prevail; it is employed only to correct slaves—slavery and freedom are antipodes. The first, with us means the *nadir* of human degradation; the latter, the zenith of human rights, or rather of political and civil rights. The slave is considered a mere animal, a biped, without any of the attributes of political character. Whether this relative position of the slave and citizen is right or wrong, is not now to be discussed. The relation of slave and free citizen exists, and we can not help it; the destiners so ordered it, and the sentiment, which I urge as the *Kentucky law,* is but a promulgation of the principles of fitness, which result from that relation. It is a sentiment identified with our souls, hearts and heads, and constitutes an essential element of our moral entity.

Gentlemen, I wish to be understood upon this point. I understand the term man to mean a moral being, and his animal body, to be a mere casket, made to contain and preserve the *jewel,* the *morale,* which is really and essentially the man. That the moral man being immortal, and of celestial origin, and enclosed in a machine so fearfully and wonderfully made, is under a high obligation to vindicate the safety of that machine so essential to the performance of his moral functions, during his occupation of it; and I consider the obligation of man to preserve his moral nature from degradation, stronger than to preserve his animal structure from

destruction. Degradation is the destruction of the moral, as decollation is the destruction of the physical man. Now, sirs, the health of our moral nature is generally more necessary to our comfort and usefulness, than the health and integrity of our organic structure; moral health consists mainly in sanity of intellect and unsullied honor. It is not the wound inflicted upon his body that a man, who feels and knows how to estimate his own intrinsic dignity and conscious self-worth, regards; he rates that comparatively at nothing. It is the wound inflicted upon his character and upon his conscious self-worth—his moral entity, that agonizes him; and there is no wound of that kind that agonizes and ulcerates like the *cow-hide*—it is incurable, and subjects him like the disease of the leper among the Jews, to be driven from the society of men. It does not, and perhaps can not, kill the body, but it destroys the man; and by as much as the man is more important and more valuable than the body he occupies, by so much more is it justifiable to destroy the assailant of the former, than the latter; and yet Mr. Hardin, here admits that a man, to save his animal life, may kill the assailant, and denies that he may, to save his moral life, or rather himself, do the same. Sirs, I repudiate, with all my soul, the doctrine that a man consists of his mere animal hulk; that he is a mere automaton. That is the definition of man in his vassalid condition, of a slave, whose actions are controlled not by his own will, but by that of his master, and might perhaps be true of an oyster or a snail, but not of man in a state of freedom. As a slave, his entity consists in his mechanical utility to his proprietor. Fear with him is the stimulant, the only motive to action, and the fear of the laceration of his body with the cow-hide; but man in his native freedom, or in the freedom of self-government, is an etherial, refined, invisible and sublimated substance. He is the moral being that occupies the clay tenement, and *wills* its motives and its actions, but not limited in his *powers* and *aspirations* by its limited aptitudes. The mere animal man can not leave the surface of his kindred earth; but the real man, the

moral and immortal essence, can not, will not, stay upon earth's dirty surface; will not be confined within the narrow limits of his organic tenement—except in reference to the physical needs and brases of its nature, as, to all moral purposes, he ranges at large, limited only by the calibre of his intellectual energies. Newton ranged among the stars, and Milton made himself familiar with both the supernal and infernal regions.

But let us appeal to occurrences in human life. Have you not, gentlemen, all, or some of you, especially in early life, been embarrassed, agitated and confused upon entering into a room in which there were ladies? What produced the embarrassment? Had there been no lady in the room you would not have been thus affected. The lady was in a remote corner of the room, say twenty feet from you, and yet she embarrassed you. How, in what manner, and by what process? She did not approach you; she continued at the distance of twenty feet from you, and yet acted upon you. But nothing can act where it is not, and therefore she acted out of, or beyond the limits of her animal identity. Sirs, the ladies with whose audience we are honored during this trial, have been exerting a benign influence upon all within this house, proximate or remote. There is, gentlemen, radiating from the physical structure of every individual, moral energies, feebler or stronger, in proportion to the calibre of his intellect, which, like the light and heat emanating from the sun, act upon distant and distinct subjects. Shall, then, this aura, this aroma of the soul—shall the divine essence of volition, be tarnished, sullied, degraded and annihilated by the stripes of a cow-hide, because the process does not threaten the destruction of the body? But, gentlemen, this subject is more distinctly and emphatically one of intuitive perception than of reasoning. In its metaphysical aspect it is different, at least to me.

But I do believe there never was a Kentuckian who would not rather perish than submit to be cow-hided. It is not a matter to be reasoned about—it is a settled sentiment, in-

veterate and hereditary, not to be altered by any law of England, or of this country either. The man who does not, if he has it in his power, kill the man who attempts to cow-hide him, had better be slain himself. Public sentiment, I repeat, expects and commands him to do it, and surely it is not necessary to any good political, moral or religious purpose, that the privilege should be accorded to any freeman to cow-hide his neighbor. It is unqualified ruin to the man who submits to it. It throws him into exile in the midst of society; he is shunned by even the refuse and offal of society, loathed and abhorred. The finger of scorn and derision is pointed at him from every quarter, and even by cowards.

Gentlemen, the stroke of the cow-hide over the head and shoulders of Mr. Murdaugh was an assault upon his life more deadly than any—than all the assaults made by the mob on that evening. He could not run from the cow-hide; that would have been disgraceful and dishonorable; and what a man can not do honorably he can not do at all. He was obliged, therefore, to kill him, for that, if for no other cause. That was in itself a *legion* of causes. But without that, he had, as the proof evinces, abundant justifying cause.

But, gentlemen, let us test the matter by the good old rule, of asking ourselves how we would have acted—what we would have done in the like case—what would we do to the man who would attempt to cow-hide us? What, sirs, would we have our sons do in such a case? Let me answer for myself, and I think my answer will be yours. I am now an old man, and the blood circulates languidly in my veins; but languid, as the chilliness of age has made me, I declare solemnly in the face of high heaven, and this numerous crowd, that I would, if I could, kill the man who would attempt to cow-hide me; and I should think it the greatest misfortune of my life not to have it in my power to do so at the time; for I could not present myself to my wife and my children after having submitted to disgrace; and I would have my son to do so, too —to do as Mr. Murdaugh did. I would rather he should have perished in attempting to defend his honor than live

disgraced. In the first case, I should feel bereaved and mourn his death, but cherish and respect his memory; in the last, I should be mortified and humbled among men. I should have suspected that his mother, of whose fidelity a doubt had never crossed my mind, had dealt foully with me, and disinherit him; and so say you all, gentlemen, in reference to yourselves and your sons; so says every Kentucky father.

Do not mistake me, gentlemen; I rate human life as high as any man in existence. I would not trifle with it; I would not have it destroyed on slight causes. It is only when a man is in danger of enormous bodily harm, or of losing his life, that I would allow him to shed the blood of the assailant; but to *spit* in a man's face, to pull his nose, or to cow-hide him, is, in my estimation, the most enormous bodily harm—a harm from the consequences of which he can only redeem himself effectually by instantly demolishing the assailant if he can. To the list of injuries and assaults which I have mentioned, I would add a kick with the foot on the *seat of honor;* but in front of these, and by far the most to be abhorred, is a stroke with the cow-hide. In fine, gentlemen, a man must preserve his *honor.* It is the verdure of his soul; it is the antiseptic of his nature, the strengthener and guardian of his morals. It must, I repeat, be preserved at all hazards. So says public sentiment, the tribunal from which there is no appeal.

But I will not further detain you. I have already detained you, I fear, too long; and yet, long as I have detained you, I have not (nor has any of my coadjutors), made any appeal to your *feelings.* No attempt has been made to excite your sympathies—no invocation to your mercy. Here the cases did not need, and the high character of the accused forbade any such resort; all they wanted they obtained in you, gentlemen, an intelligent, honorable and impartial jury. They have been, and so have been their counsel, more concerned about the moral than the legal aspect of the case. They knew that they stood acquitted and justified by the law of the land whenever its impartial voice could be heard. They did not,

therefore, deprecate its sternest, its most rigid action upon their case; but, like all honorable men, they have been keenly alive to the moral aspect of their posture. Their anxiety is, and has constantly been, that the public mind should, through this trial, which they are now undergoing, be *disabused* in reference to their conduct. You can not but have perceived that no concern for the *mere personal safety* of the accused has been displayed throughout the trial. The counsel who have preceded me have argued the case with wonderful ability, but evidently with no apprehension of a dangerous result. In fine, gentlemen, this case has been argued, through you, to the people. My arguments, had I felt concern for the safety of the gentlemen I represent, would, I feel sure, have been more analytic and consecutive than they have been. The gentlemen who had preceded me had reaped the field, and left only a few straggling stalks to be gleaned; and after such reapers no man could gather a respectable sheaf. I have not, therefore, attempted to take up, analyze and apply the testimony; that had been done ably and demonstrably by my distinguished and talented coadjutors, and I could not think of disgusting you and tiring out myself by reiterating it.

I feel that I have been irregular and discursive, much more so than had been my wont in years gone by, and I ascribe it, in some degree, to the causes I have just named. You, perhaps, may ascribe it to the growing weakness of senility, and to guard against further exposure of weakness from that or any other cause, this shall be my last forensic effort. But before I close it, let me suggest that it would be courteous to these already much injured strangers, and in keeping with just notions of national hospitality, to render your verdict (which I know well will be one of acquittal), without retiring from the box. I barely suggest it. *I ask nothing* from you but the performance of your duty. I only suggest that it is your *privilege* to give in your verdict without retiring. You will exert that privilege or not, at your pleasure.

Mr. Bullock. You, gentlemen, have not disappointed the expectations I had formed of the attention you would give

to the questions of law, the evidence, and the arguments of counsel in this great and important cause. I feel a pride in considering that so intelligent a jury could have been so easily and with so little exception, selected from our jury panel. I feel no less pride in confiding to you the scales of justice, which I know you feel it is your duty to hold up steadily and with an even hand. It is no small part of my duty to see that nothing be thrown into either scale, which the law says can not be admitted, as the measure of justice.

I have listened with great admiration to the splendid effort made for the defense by one who has risen in this court for the first time, though distinguished and honored throughout the Union for his unrivalled powers of eloquence. But, gentlemen, however much we may be fascinated, we must reflect that the brilliant flowers of language addressed to the passions, have no sympathizing response in the laws of the land. All that has been said to delight the fancy and to distract your attention from the simplicity of the facts must be discarded, that your cool reason and dispassioned judgments may have free scope. And I would ask you, gentlemen, whether, in your efforts to arrive at a just conclusion, you will be guided by the coruscations of the gentleman's fancy, or the sunlight of sober truth and reason.

Gentlemen of the bar will figure to themselves many foundations for their assertion, which exist nowhere but in their own imaginations. It is a misfortune to these gentlemen, as it frequently is to others, that the law is not to be meted out to them according to their peculiar notions of the standard of measure. It is, no doubt, considered by them, too, a misfortune, that when they wish to make evidence appear improbable, that does not exactly suit their views, they can not beat down a witness by facts, but are driven to the necessity of exerting talents so transcendant as those of Mr. Prentiss, in blackening, villifying, degrading, and insulting those who are defenseless and unarmed with equal talents, or equal opportunities of displaying them. Indeed, it seems to be a matter of complaint in this defense that these gentlemen

should at all be suspected of offense, much less brought here under the implication of crime. However, the counsel for the defense may think it necessary to resort to such tortuous paths, I, at least, shall not follow their example. I shall endeavor to redeem a pledge I made on the outset, that I would not consume your time by traveling out of the straight path of the evidence and the law.

If Mr. Prentiss, or any other gentleman, believes that in speaking of Mississippians, I alluded to their country disparagingly, I hasten to remove the unjust supposition; and I can, with confidence, say that in the performance of my duty, I know no difference between a Kentuckian and the inhabitant of a sister State. When I used the appellation it might have been in reference to the greater relaxation of the law there respecting the use of arms, but certainly not with a view of raising a prejudice against these gentlemen on this trial.

Gentlemen, you are not to ask whether they are Mississippians or whether they are Kentuckians. You are to decide according to law and evidence, regardless of passions, prejudices or sympathies, or the complaisance due to sister States. You are also to disregard the peculiar laws and customs of those sister States, and to decide according to the laws recognized in Kentucky alone.

I will here touch upon a point not urged by Mr. Hardin. It is on the subject of character. One of the most felicitous passages in Mr. Prentiss' speech was that in reference to the character of these gentlemen, and I am willing to accord to it all that weight which the law allows, but no more. However high these gentlemen may stand in the estimation of the citizens of their own State, yet their character is entitled to no more consideration than the law allows of in cases of doubt. But where no doubt exists, are you to consider character, however exalted, an impunity from punishment, or suffer it to wipe away from the insulted majesty of the law, the stain fastened upon it by the blood shed by their hands in the Galt House? Starkie, Vol. 2, p. 214, lays down this

rule: "Where the guilt of an accused party is doubtful, and the character of the supposed agent is involved in the question, a presumption of innocence may arise from his former conduct in society. Such presumptions are, however, remote from the fact, and are entitled to little weight, except in doubtful cases."

If these gentlemen are entitled to that triumphant acquittal—to the acquittal by acclamation invoked from you—why have their advocates, who are lawyers of great learning, thrown the character of their clients into the defense, when they knew you could weigh that subject only when guilt or innocence is doubtful. 'Tis only (and they well knew it) where the scales are equipoised that character, like the sword of the Gaul upon the Roman battlements, can be thrown in to make either preponderate. Another thing they urge is that Judge Wilkinson, placed in such delicate circumstances as he was in regard to his contemplated marriage, would be the last to engage willingly in a fight or angry controversy. Unfortunately the Judge's own conduct offers a refutation to this argument. He displays none of that forbearance and unwillingness to embroil himself in fight, when, without provocation, upon a slight and imaginary insult, he attacks the poor tailer in his own shop.

Judge Rowan and Mr. Prentiss would have you believe that the common law of England should be made to bend to the peculiar circumstances of their defense. Will you, gentlemen, change the law? Will you warp and bend the common law of England, adopted by our constitution, and to which we owe protection of life, personal liberty and property? I am well assured you will not take upon you to judge how the law ought to be bent, when you are told and must feel persuaded that you are bound to take it as it is. Were you, indeed, in another place, delegated to the halls of your Legislature, you might individually make the attempt, unavailing though it might be; but here you can not—you ought not. Some such notions as those of the gentlemen gave rise, I have no doubt, to the act of Assembly, which I will now

read—Vol. 2, Dig. L. Ky., p. 1295: "Whereas, It is represented to the present General Assembly that doubts exist," etc., "Therefore, Be it enacted," etc., "That nothing in the before-recited act shall be construed to change or alter the definition and punishment of murder by the common law," etc.

Here there is the re-enactment of the common law, and here your own Legislature tells you that you must not be led away by the sophistry of counsel to believe so foolish a thing as that you are permitted to bend the law to suit their purposes. Is the law to be warped because they conceive there is a degradation in being struck with a cow-hide? It is also a degradation to be called a fool or a liar, but the law says words are no excuse for even an assault, and where are you then to draw the line of demarcation?

There is a spirit of licentiousness abroad, which, if not checked, may lead to consequences not to be contemplated without horror. This licentiousness has already been suffered to go too far. But why need I stand here to tell you of what you all know, or to defend the laws, for they defend themselves? Neither is it necessary that I should stimulate you to the keeping of your oaths, or to admonish you that you have sworn solemnly to administer the law in justice no less than in mercy. I am bound to take it for granted that you will do so. I have, indeed, an admission from the gentlemen that the common law of England governs the case, and not adventitious notions of what ought to be the common law.

I know it is the customary resort of lawyers to ask you, as jurors to place yourselves in the situation of the accused, and say how you would act under similar circumstances. My answer would be that with similar motives, similar passions, similar disregard of the laws, as well as similar circumstances, I would act precisely as they did.

These gentlemen have taken what I consider an unwarrantable liberty in denouncing the practice of lawyers taking money in aid of the prosecution from the friends of the de-

ceased. Yet where would now be the fame of the greatest lawyer Kentucky has ever boasted of had the precepts of the gentleman's own ethics applied to his own practice. He can not see the difference between a man who kills a man for his money and the man who takes money to kill another. That gentleman himself has defended many horse-thieves and highway robbers, and accepted from their polluted hands a portion of their spoils as a reward of his services in snatching them from the fangs of offended law and justice. I need refer to no stronger case than that of John Hamilton, who murdered in cold blood for his money the unfortunate Dr. Saunders. Has not Judge Rowan himself thus fed and clothed his family, fattened and grown rich upon the spoils of thieves and murderers? But, still, I blame him not. "It was his vocation, Hal." Why, then, insult my friend Mr. Hardin on this subject? I need say no more; the argument, of course, goes for nothing.

To return to the subject of these gentlemen's readiness to arm themselves for battle. Have we not proved that Murdaugh and Dr. Wilkinson, upon the slightest provocation, were prompt in pulling out their weapons almost upon every and all occasions? Does this argue a disposition willing to be driven to the wall before self-defense renders the use of such weapons lawful?

Let me, before I proceed further, endeavor to wipe from the fair fame of Mr. Redding the foul and unjust stigma with which it has been branded. When I attempted to obtain from respectable witnesses, merchants of Louisville deservedly of high standing, men who could have testified to his character in proof of its being esteemed as elevated as that of any man in the community to which he belongs, I was met with the assurance from the other side that they did not intend to question or impeach his character. Yet how unfairly and unhandsomely do they come in after the evidence had closed, with all the vituperation of secure malignity, to stigmatise him as a perjurer and murderer.

What has he stated that is not corroborated by others whose

veracity is unquestioned? He stated that he was assaulted in his own store. Are his details of that transaction unsupported by other evidence? He goes to the Mayor's office. Is that untrue? He asks for a warrant; is told he must have the names; is offered a warrant with names, to be filled up—declines it—says he would prefer going for the blanks or getting an officer to arrest the parties, knowing only one name—goes by Market street—tells his brother-in-law what happened—is accompanied by him to the Galt House—says that in the bar-room he got the names—asked Judge Wilkinson if he was not the gentleman who had struck him in his own shop. All these things are leading facts, and is he not corroborated in stating them? But an attempt is made to show a disposition to assault Judge Wilkinson in that very observation in question, "I think, sir, you are the gentleman who assaulted me with the poker in my own house or shop." What is there remarkable in that? Does it not corroborate and fit in with his statement about the names, the blank warrant, and many other things? In getting the names he was uncertain of the persons, and to assure himself asks one if he was not the person who had struck him. What could be more natural, to see that he was right?

Mr. Hardin has read to you from Foster that no words, however opprobrious, are sufficient to justify an assault—may I not ask how much less sufficient to justify a killing? However refined and subtle Judge Rowan's notions may be of the nature and value of life, the notion entertained of it by the law is a surer guide. The law says that by it alone you must be guided, and not by vague and indefinite distinctions.

Mr. Prentiss has made a most ingenious argument to prove that a conspiracy existed against these gentlemen; but unfortunately he lays his principal foundation stone upon Jackson's testimony, which we have proved to be a running quicksand and unworthy of trust or confidence. The opposite side contend that Johnson and Redding are not entitled to credit. Well, suppose that were the case—though I am far from ad-

mitting it—but suppose the case, what then? Can we not make them a present of their testimony and throw it aside with that of Jackson and Oliver, however unwilling to let them into such company, have we not abundance of evidence as to the leading facts—and how will the gentlemen contradict that evidence? Oldham tells you that while the affair was going on he was talking to some one about bringing a boat down the river from the mouth of the Kentucky, and that he had gone there to see that gentleman upon that subject, and had no knowledge of any conspiracy and consequently no idea of joining in it. Johnson tells you plainly how he got there—he had parted from Redding at the jail and had gone in search of an officer; that he went to the Galt House merely to see the arrest. Rothwell, it is well known, accompanied Redding as his brother-in-law. Halbert boarded in the Galt House, and had as much right to be there as Wilkinson or any one else. Holmes, who was his bosom friend and comrade, was there on his invitation as his guest. Might not the gentlemen as well ask how came Trabue, Montgomery and others there? Had Montgomery who raised a chair, been killed, these gentlemen might as well be defended for that killing as for that of Meeks and Rothwell.

Another argument is, that these gentlemen were going down to supper—and I do not myself think they were bound to go through any other than the bar-room passage; yet if their object was merely to go to supper, why did Murdaugh come wrapped in his overcoat? I have no doubt that the witness who expected there would be a fight, attended the Galt House for no other reason than that which is so common throughout Kentucky as well as everywhere else, to be looking on wherever there is a fight; for people, in spite of all we can say, will have the curiosity to see what is going on even in the jaws of danger.

I thank Judge Rowan for the fine definition he has furnished of the value of human life, because I may quote what he advances on the subject in proof of the value of these gentlemen's lives, to show that the lives of Rothwell and Meeks

were to them and their friends no less valuable—no less precious. And will Judge Rowan say that we must throw the shield of the law between these gentlemen and their temporary loss of liberty, yet deny its protection of the lives of Rothwell and Meeks, to the Commonwealth, when threatened with the loss of two valuable citizens? I tell you, gentlemen, it matters not whether you believe the law ought to be other than it is, you are bound to administer it though the heavens should fall—you are bound to administer it as it is, for you are sworn to do it. How does Mr. Murdaugh stand on that point? who showed the first weapon? who brandished his dirk, and seemed to court the combat?

In reference to the opinions of Mr. Prentiss and Judge Rowan, that a man's right to self-defense is founded upon his own notions of right, I have a few observations to make. If that were really the law, in the name of common sense, could any man ever be convicted? Does the law quoted by them actually establish such an absurdity? Far from it. Their doctrine is too wire-drawn for their purpose. The words of the law say there must be satisfactory proof that the danger was imminent. I have said before that the law presumes the guilt of the slayer until his innocence is shown. There must be evidence of that innocence where there is ground to presume guilt. We have proven the fact that Rothwell and Meeks were killed. Must not these gentlemen who killed them prove their innocence?

In reference to a point made against me, if I said, as is alleged, that a man has no right to kill another who is slaying his brother, I meant to say that he had no more right from the circumstance of relationship than he had without it; but I did not intend to deny the right of any man to prevent a killing by slaying him who is in the act of committing a felony. Now, when Judge Wilkinson made the fatal stabs with his knife, is the fact proven that his brother was in such apparent and imminent danger of immediate death as to justify his interference upon the principles of the case read by the gentleman from Lord Hale?

Gentlemen, you have been detained a great while on this trial. It is justly considered an important trial; the manifest anxiety of a crowded court evinces it. You have been told that owing to peculiar circumstances you are to bend the law of England common to this country; that because a cow-hide has been used, which here is considered a degradation; that because of these things you are, at the request of these gentlemen's advocates, not alone to acquit the prisoners, but to acquit them with plaudits, and to excite the applause of the crowd. You are told all this, though it is known you have a grave and solemn duty to perform; though it is presumed you have heard of the majesty of the law, and though you see before you that majesty represented with such dignity by the presiding Judge of this court. These things are not to be overlooked. If the law is to be vindicated, if it has been broken, if it has been violated, render your verdict in its vindication. If you believe these gentlemen innocent, acquit them, but do it with propriety. But I would entreat you to deliberate; and whether you vindicate the offended laws or restore the innocent to society unscathed, in rendering your verdict remember that this is not a theater, but a solemn court of justice. Gentlemen, the case is with you.

THE VERDICT

The jury were then taken to their room and remained in consultation fifteen minutes. Upon returning to the court they announced their verdict on both indictments as follows: "In the case of Edward C. Wilkinson and others, for the murder of John Rothwell, we of the jury find the within named defendants, and each of them, NOT GUILTY of the offence charged against them in the within indictments."

The same verdict was rendered on the indictment for the murder of Alexander H. Meeks.

THE TRIAL OF FRANCIS WITTENBURGH FOR PROCUREMENT, NEW YORK CITY, 1818.

THE NARRATIVE

Wittenburgh was the keeper of an intelligence office for servants in New York City and to him one day in February Mary Jones, a young female who had just arrived in New York from the country applied for a situation. He sent her to several people whom it appeared did not want servants and finally to a Mrs. Davis, the keeper of a house of ill-fame. She escaped from the house and after wandering in the streets was taken up by the police to whom she told her story. At the trial there was evidence that Mary Jones was a wanton, but this was denied and was probably untrue, as one of the defendant's witnesses who had sworn to this was ordered into custody after he had finished his testimony. Wittenburgh was convicted, the Court holding that it made no difference what the character of Mary Jones was, as the keeper of an intelligence office had no right to supply either good or bad women to a house of ill-fame.

THE TRIAL[1]

In the Court of General Sessions for the City and County of New York, City Hall, New York City, March, 1818.

JACOB RADCLIFF,[2] *Mayor,*
RICHARD RIKER,[3] *Recorder,*
A. L. UNDERHILL, *Alderman,*
JAMES WARNER, *Special Justice.*

[1] *Bibliography.* "New York City Hall Recorder," see ante p. 61.
[2] See ante p. 61.
[3] RIKER, Richard (1773-1842). Born in Newtown, L. I. Admitted to Bar N. Y., 1795. District Attorney, 1802-1804. Ap-

March 2.

During the last term Francis Wittenburgh was indicted (the indictment containing two counts) for a misdemeanor at common law; for that he is now, and for a long time has been, the keeper of a public intelligence-office, in the city of New York, where servants, male as well as female, for a certain compensation by them paid, are furnished with places—and persons, in want of servants, for a certain compensation by them paid, are furnished with servants,—that the defendant, on the 5th of February, 1818, at, etc., wickedly intending and devising, by means, and under color of his business and calling, to aid, abet, and assist divers lewd and debauched persons, to the jurors unknown, in the seduction and ruin of young female girls, and to incite to prostitution and to pander to the lustful passions of divers debauched and profligate men, to the jurors unknown, did, on application to him, the defendant, as the keeper of a public intelligence-office, by Mary Jones, for a place in a decent family, recommend her, the said Mary Jones, to one Davis, the keeper and maintainer of a certain ill governed and disorderly house, where men and women come and meet together for the purpose of concubinage, he, the defendant, well knowing the said Davis to be the keeper and maintainer of a common brothel, and intending by such recommendation to ensnare and debauch, and cause to be ensnared and debauched, the said Mary Jones; against the peace of the People of the State of New York, and their dignity. The other count stated the offence in a more general manner, but in substance it was the same.

Hugh Maxwell,[4] District Attorney and *Mr. Price* for the People.

pointed Recorder, 1815. Removed, 1819. Re-appointed, 1820. Removed again in 1823, but restored in 1824 from which period up to 1838 he held the position uninterruptedly during which time he was "the terror of evil doers and the right hand of his party." In 1803 he was wounded in a political duel with Robert Swartwout. He was a man not less famous for his integrity, his courage and the severity of his judgments than for the prominence which was given him by Fritz Greene Halleck in his well-known poem, "The Recorder."

[4] See ante p. 62.

Mr. Wilson[5] and *Mr. Gardenier* for the Prisoner.

Mr. Maxwell. This case is novel in the history of our criminal jurisprudence. It appears in evidence, that a young female stranger, by the name of Mary Jones, some time ago came to the city for a place as chambermaid in a decent family. She applied to the defendant, as the keeper of a public intelligence-office, for a place; and he furnished her with several tickets, containing the names of persons, whom on her application, were found not to be in want of a servant; and she found that several of these persons had never applied to the defendant. After he supposed that her patience was exhausted, knowing her to be in a destitute situation, he gave her a ticket for a Mrs. Davis, the keeper of a common brothel in College street. This woman lent her a suit of clothes, and otherwise decorated her for the reception of visitors. Finding it to be a house of ill fame the girl escaped at twelve at night, wandered through the streets, and at length seeing a light in or near the Jew's Synagogue, recently erected, she crept in there for a shelter, and slept on the carpenter's shavings. After this, in her wanderings through the streets of this city, she was taken up by the watchmen, and by the artless simplicity of her story, created an interest in her favor. She complained to the Grand Jury, and one of the gentlemen belonging to that body sent her home to his family. Such is the nature of the case, the particulars of which will be detailed by the principal witness.

WITNESSES FOR THE PEOPLE

Mary Jones. Am between seventeen and eighteen years old. On my first arrival in New York from New-Brunswick in the packet, I went first to the intelligence-office kept by defendant. After I had escaped from the house of Mrs. Davis, I staid in the Synagogue, which was on Saturday night. Then I went to Brooklyn, and the next day went to church. I returned and went to the office again, and told defendant that he had recommended me to a bad house, when he admitted he knew something about the house and entered into an indecent conversation with me and spoke of the advantage I might derive from walking in Broadway towards evening for suitors. I saw

[5] WILSON, Isaac. Member New York Assembly. Representative in Congress, 1823. Died, 1848.

Thorp in the office; then he commenced an indecent conversation with me and afterwards he accompanied me to a Mrs. Gotier's in Chamber street, for a place.

John Thorp. Was in the intelligence office when Mary Jones came in and she then passed by the name of Mary Ann Warner. It was cold, and she was thinly clad. I invited her to enter the gate and come near the stove; when a conversation between us ensued. (The witness proceeded in a rapid manner, and without the least qualification, to state the words alleged by him to have been uttered by her, being the most scandalous and indecent which the language can afford.)

Cross-examined. Was in the employ, and attended the office of defendant. I gave Mary Jones a ticket for Mrs. Davis, she having previously sent an order for a chambermaid by the captain of her house.

THE COURT ordered this witness to be taken into custody.

Adolph Gatterfield. Corroborated the statement of Thorp in many particulars, especially in the indecent behaviour and language of Mary Jones. He differed from that witness in his description of her dress.

Barent Gardenier. Defendant, though in indigent circumstances, was assiduous in his business, and devoted his attention to rendering his family comfortable. His general character is good. (Several witnesses concurred with the last, in showing the defendant's general character.)

Ann Adeline Parmeter. (Witness for the defendant.) About two years ago defendant recommended me as a private instructress in the family of Hon. De Witt Clinton. Have known defendant two years, and his character is good.

Dr. Hosack (by consent of Counsel). One of the family of a Mr. Laverty, in this city, stated to me that that gentleman found Mary Jones in a tailor's shop, seeking employ, and finding her in a destitute situation, gave her a place in his family.

Israel Case (one of the jurors). Ten or twelve years ago Adolph Gatterfield was in my employ and was then in some repute but afterwards he kept a dance-house in Tyron Row.

After *Messrs. Wilson* and *Price* had summed up the case to the jury, *Gardenier* moved the court for an adjournment of the cause, for the purpose of enabling the defendant to produce further testimony touching the character of Mary Jones.

Maxwell consented; the court adjourned until the next morning, cautioning the jurors to hold no conversation with, and receive no communication from any person, on the subject of this case.

March 3.

Gardenier opened the further defense, by stating to the jury, that he should prove that Mary Jones, on her passage

from New Brunswick to this city in the packet, and during her stay on board, behaved in an indecent and incontinent manner. He should go further and show, that she had been discharged from the house of Laverty, and that of Gabriel Lewis, where she went to service, after the time of the injury complained of in this indictment, by reason of her indecent conversation and demeanor.

William G. Keech and *John Auter* said that about the last of November the girl, Mary Jones whom they both identified, came from New-Brunswick in a packet called the *Greyhound,* and that her conduct on board, according to her confessions to them, was scandalous in the extreme.[6]

Robert Grant (a colored man). and *Hannah Timanes* (servants in the family of Gabriel Lewis). The conduct of Mary Jones while there, was grossly indecent, and for that reason she was discharged.

REBUTTAL

Engle Meyers. Three or four days after New Year, Mary Jones came from New Brunswick to this city in a packet. She was poorly dressed and requested me to recommend her to a place; and I sent her to Mrs. Isaacs, a Jewess, living in or near the Synagogue, where she remained about a week. While on board the vessel her demeanor was good.

Mary Jones (re-called). Asked why she did not yesterday state that on her first arrival in the city she went to live with Mrs. Isaacs. Answered, hesitatingly, first, that she did not want to state about her being with that woman; and next, she forgot it.

She denied the indecency attributed to her on board the packet, by Keech and Auter, and also that in the house of Lewis, by his servants. She further denied that she came to this city from New Brunswick in November.

The books of defendant containing the names of applicants for places, and also those for servants, were produced; from which it appeared, that, on the 13th of January, Mary Ann Warner applied for a place as a chambermaid, and that, on the 19th of the same month, Mary Jones applied for the same situation; and the application of Sarah Davis for a woman in that capacity, appears to have been made the same day.

[6] The time, spoken of by these witnesses, did not correspond with that stated by Mary Jones, by several weeks; she having stated that she came in the packet from New Brunswick a short time after New Year.

RADCLIFF, Mayor (to the jury): Supposing Mary Jones to be a decent woman, and that she was beguiled by the defendant to enter the house of Davis, knowing that she kept a house of ill fame, this is conceded to be a misdemeanor. But, suppose she was not an innocent woman, and was sent to that house by the defendant, would this be a public offense? The defendant, being the keeper of a public intelligence-office, was bound to conduct that business with fidelity; inasmuch as it was an office in this community of considerable public importance. Should the jury believe that Mary Jones was an innocent person, and that defendant beguiled her into the house of Davis, knowing that to be a house of ill fame, in the view of the court, this would be a very high-handed misdemeanor. But the evidence in this case presents another question: suppose this to be a woman of ill fame, as some of the witnesses for the defendant represent, and defendant recommended her to the house of Davis, knowing its character, is he guilty of a public offense? In other words, has the keeper of an intelligence-office the right of supplying women for houses of ill fame? The court does not hesitate on this subject to say, that it considers this also a misdemeanor. The principal question, therefore, for the determination of the jury in this case, is, whether defendant, at the time he recommended Mary Jones to the house of Davis, knew that she kept a house of ill fame. On this point, the testimony is not direct; and the jury, in determining, may recur to all the facts and circumstances of the case. Should the jury believe that the defendant did not know the character of the house, he ought to be acquitted. But, if he had this knowledge, and sent Mary Jones there for the purpose of prostitution, whether she was an innocent woman or not, he ought to be found guilty.

Verdict GUILTY.

April 30.

The defendant was brought up for sentence.

Mr. Gardenier moved in arrest of judgment on the ground that the offense set out in the indictment was un-

known to the common law; that there was no precedent or statute for it.

THE COURT. There is a distinction between an injury of a private nature and a public offense. This is like the case of a grocer charged with using false weights when the offense is that the grocer deals with the public at large and it is therefore a crime in him though it would not be so if practiced by a private individual. The keeper of a public intelligence office is as much connected with the public as a grocer and the offense of which he has been found guilty is more atrocious in a public point of view than selling by false weights and measures. In consideration of the prisoner's poverty the punishment will be a fine of twenty-five dollars and costs.

THE TRIAL OF ALEXANDER W. HOLMES FOR THE MANSLAUGHTER OF FRANCIS ASKIN, PHILADELPHIA, 1842.

THE NARRATIVE

On March 13, 1841, the American ship *William Brown* left Liverpool for Philadelphia. In addition to a large cargo, the vessel carried sixty-five passengers and a crew of seventeen men. At nearly midnight, on Monday, April 19, when two hundred and fifty miles from Cape Race, Newfoundland, the vessel struck an iceberg and began to fill so rapidly that it was evident she would soon go down. The long boat and jolly boat were cleared away and lowered. The captain, second mate, seven of the crew and one passenger entered the jolly boat, and the first mate, thirty-two passengers and the remainder of the crew the long boat. Thirty-one passengers were left on the ship; they begged the captain and mate to take them into the life boats, but the mate only replied: "Poor souls! you're going down a short time before we do." One hour later the ship went to the bottom and thirty-one passengers perished.

The next morning the boats parted company, the captain telling the crew of the long-boat to obey the orders of the mate, which they promised to do. Six days later the jolly-boat was picked up by a French fishing lugger. But how fared it with the long-boat? You shall hear. Loaded to the water's edge, she could only be kept afloat by constant bailing. A slight blow, a collision with a piece of ice, even a mistake in steering would certainly swamp her. Nor was there even the slightest hope of rowing her to shore, filled as she was with human beings. On Tuesday morning, after the two boats had parted company, it began to rain and continued throughout the next day and night. Towards morning the wind began to freshen, the sea grew heavier, and once or twice a wave swept completely over the boat, wetting

every one to the skin. Pieces of ice were floating about, and an iceberg was discovered ahead. About ten o'clock the next night, after the boat had been afloat over twenty-four hours, the crew determined on a terrible remedy—to lighten the boat. Of what? Of the human freight. They commenced to throw over the passengers, and did not stop till there had disappeared under the waves fourteen men—among them Frank Askin—and two women passengers of the *William Brown*. No lots were cast, but man and wife were not allowed to be parted. When the dread work had been completed, there remained on the long-boat nine seamen (including the negro cook) two men and sixteen women. Early next morning a sail appeared, but the shock and the exposure had been so great that only one man in the boat was able to put out a signal, and he was the sailor Holmes. The ship left her course, sent out a boat, and the twenty-seven sufferers were saved.

Back again in his own country, Holmes, the seaman, was indicted for the killing of Frank Askin, one of the passengers thrown overboard, under a Federal statute reading, "Any seaman who shall commit manslaughter upon the high seas, on conviction shall be imprisoned not exceeding three years and a fine not exceeding one thousand dollars." Holmes was charged with the unlawful, but not malicious, killing of Askin. During the trial, which opened at Philadelphia on April 13, 1842, Holmes' appearance and the account of his actions while in command of the long-boat, commanded admiration and his physique and countenance would have made an artist's model for decision and strength. It was proven that he was the last man to leave the wrecked ship, and, when he entered the long-boat, he found a widowed mother crying for her sick daughter, who had been inadvertently left on the doomed ship. Holmes immediately climbed up the ship's side and, at the great peril to his life, ran astern, located the sick girl, and placing her over his shoulder climbed down the ship's side and restored her to her mother. With the exception of a shirt and trousers, he gave all of his

clothing to the women in the boat and uttered words of encouragement to the remainder of the passengers and crew. It was also proved that the first mate lost courage and turned the command of the boat over to Holmes, who immediately changed the course, thus enabling him to sight the ship *Crescent* which rescued them.

Holmes' defense was that the homicide was necessary for self-protection and for the protection of the lives that were spared. The prosecution claimed that the circumstances did not justify the action taken; that many of the persons thrown overboard struggled violently and, as the boat did not capsize then, there was little chance of it occurring under any of the other conditions then existing. The Court ruled that extreme peril is not enough to justify taking life, nor would even the certainty of death be enough, if death were only prospective. It must be instant. The sailor is bound to undergo whatever hazard is necessary to preserve the boat and passengers, even to the extent of sacrificing his life. While it is admitted that sailor and sailor may lawfully struggle with each other for the plank which can save but one, if the passenger is on the plank, even "the law of necessity" justifies not the sailor who takes it from him.

The jury deliberated sixteen hours and then returned a verdict of guilty with a recommendation for mercy. The defendant was sentenced to six months in the Eastern Pennsylvania Penitentiary and a fine of $20, but the penalty was subsequently remitted.

THE TRIAL[1]

In the United States Circuit Court, Eastern District of Pennsylvania, Philadelphia, April, 1842.

MR. JUSTICE BALDWIN,[2] Presiding.

[1] *Bibliography.* * "Trial of Alexander William Holmes, one of the crew of the ship *William Brown*, for manslaughter on the high seas. Before the Chief Justice of the United States Circuit Court for the Eastern District of Pennsylvania, Philadelphia, 1842." This pamphlet is very rare, the only copy catalogued being in the Harvard Law Library. The case is reported briefly in 1 Wall Jr. 1.

[2] BALDWIN, Henry (1780-1844). Born in New Haven, Conn.

Alexander William Holmes, one of the crew of the ship *William Brown*, had been indicted for manslaughter, in throwing one Askin, a passenger of the ship from the long-boat, after the vessel had been abandoned on the high seas, on her passage from Liverpool to Philadelphia, on April 19, 1841.

The following jurors were empaneled: Robert Milnor, Henry O'Neil, Joseph S. Borie, Edward Keenan, Jacob S. Mintzer, James McAnall, Edward Abbott, Adam D. Emerick, Robert E. Hill, Peter Crans, Sr., William Y. McCahen and Thomas Foster. Two were excused from serving: John Hopkins, because he entertained conscientious scruples against sitting on a jury in a case of homicide, and George Weevil, because he had formed and expressed an opinion in the case.

William M. Meredith,[3] District Attorney, *George M. Dallas*[4] and *Oliver Hopkinson* for the United States.

David Paul Brown,[5] *Isaac Hazlehurst*[6] and *Edward Armstrong*[7] for the prisoner.

Graduated from Yale, 1797. Practiced law in New Haven. Removed to Pennsylvania. Representative in Congress for Pennsylvania, 1817-1822. Associate Justice Supreme Court of the United States, 1830. Author of "Origin and Nature of the Constitution and Government of the United States," Philadelphia, 1837.

[3] MEREDITH, William Morris (1799-1873). Born in Philadelphia. Member Pennsylvania State Convention, 1837. U. S. Secretary to the Treasury, 1849. Attorney General of Pennsylvania, 1861-1867. President Pennsylvania Constitutional Convention, 1872.

[4] DALLAS, George Mifflin (1792-1864). Born in Philadelphia and Mayor of that city in 1825. United States District Attorney, 1829-1831. United States Senator, 1832. Minister to Russia, 1837. Vice-President of the United States, 1844. Minister to England, 1856-1861.

[5] BROWN, David Paul (1795-1872). Born in Philadelphia. Studied medicine but soon chose the bar. In fifteen years after his admission his professional income amounted to $100,000, but his generous living had absorbed it all. He always declined office and rarely practised outside of Pennsylvania, but continued in practice until his death. Author of "The Forum or Forty Years Full Practice at the Philadelphia Bar." 2 Vols., Phila., 1856. He also wrote several dramas. His son edited and published his speeches. (Phila., 1873.)

[6] See *post* Trial of Joel Clough, p. 723.

[7] ARMSTRONG, Edward. Born at Enniskillen, Ireland, in 1824.

The trial coming on almost on the day of the anniversary of the terrible tragedy, the court room was crowded with spectators. Among others several stenographers from the city newspapers appeared within the bar for the purpose of reporting the evidence for their expectant readers.

MR. JUSTICE BALDWIN. An act of Congress passed some years ago [8] took away from the Court the power to punish as a contempt the publication of testimony pending a trial before us. We have however the power to regulate the admission of persons and the character of proceedings within our own bar. The COURT sees persons present whose object it presumes is to report the evidence as it advances for the press. The COURT therefore orders that no person be allowed to come within the bar of the court for the purpose of reporting except on condition of suspending all publication until the trial is concluded. On compliance with this condition and not otherwise the COURT will direct that a convenient place be afforded to the reporters of the press.[9]

Mr. Hopkinson in opening for the United States, briefly narrated the circumstances attending the loss of the ship *William Brown,* and the throwing overboard from the long-boat of several of the passengers, among whom was Francis Askin, the person whom the prisoner is charged in this indictment with killing. The charge upon which he is about to be tried is that of an "unlawful homicide" only, and not of a felonous or malicious homicide. In other words, the prisoner is charged with the commission of a homicide without premeditation or malice, on the one hand, and without justification or excuse on the other. The trial of such a case, has never before occurred in any nation, nor have even the elementary writers upon law, with one exception, ever suggested such a case. The indictment has been framed in

In 1844 emigrated to Montreal, Canada. Removed to Philadelphia in 1848. Was a prominent member of the American Protestant Association, and was for many years Secretary of the Historical Society of Pennsylvania.

[8] March 2, 1831.

[9] See post, p. 377.

such a manner as to meet any technical objection which might be urged from the fact that the homicide occurred from on board a boat without a specific name, and which can only be described as the "long-boat of the ship *William Brown*," belonging to the Messrs. Vogel of this city. Mr. *Hopkinson* concluded by stating that as he did not desire to throw any pre-judgment of the case into the jury box, he had merely mentioned a few points to bring the case before the jury, and would leave the detail of the facts and circumstances to the witnesses.

THE EVIDENCE FOR THE PROSECUTION

Bridget McGee. Was a passenger on the *William Brown.* We left Liverpool on 12th March, 1841. On Monday night, 19th April we struck the iceberg. We were all in our beds. James Black called out that we were sinking, and we all rushed on deck. When I went on deck the sailors were busy getting out the long boat and jolly boat. Went into the long boat after some of the other passengers. Holmes said we must get out of the boat. I told him I would not leave the boat and go back to the sinking ship. He turned from me and said no more. Four of a Scotch family named Edgar got into the boat and one of the sisters remained on deck. Holmes went back into the ship and carried this girl on his back down into the boat. The two boats pushed away from the ship just before she went down about 11 o'clock. The captain's boat—the jolly boat—and the long boat staid together until morning. The captain gave Rhodes, the mate, a compass and chart and told him he was 250 miles from land. In the morning the captain took down the names of everyone in the long boat. All day the sailors and passengers continued bailing and rowing the boat. On Tuesday night about ten they commenced throwing the passengers out of the long boat. The first was Owen Riley. He called on the Scotch woman, Mrs. Edgar, to speak to the sailors to spare his life, as he thought she had influence over them. Frank Askin was the next. He had two sisters in the boat. Mary said if they threw her brother over, they might throw her over after him. After they threw him over they threw her over too, and then they threw the other sister, Ellen, overboard.

Holmes caught hold of James Black, a passenger. He said, "Who is this?" Black answered, "Why, it's James Black." When the mate heard Black's name he said, "Don't part man and wife," and they did not throw Black over. Charles Conlin was sitting next to me when seeing Holmes coming to him, he said, "Holmes,

dear, you will not put me out?" Holmes answered, "Yes, Charlie, you'll go, too," and took hold of him and threw him out. Conlin was the last person they threw out, but there were two others that remained in the boat they did not see. In the morning the sailors saw these other two passengers; one hidden under a seat, and the other under the stern of the boat; John Nugent was one of them. Don't remember the other; at daylight these two began bailing the boat. When they had done, the sailors threw them out. About an hour and a half after that we were picked up by the *Crescent*. The men that threw the two out were Charles Smith, Holmes, John Stetson and Henry Murray, a colored cook. Rhodes did not assist or throw any over. He was the mate. Thirty-one went down in the ship. There were several females among them. None of the crew went down with the vessel and none of them were thrown from the long boat.

There were nine sailors and the mate in the long boat. The weather was no worse when the passengers were thrown out than it was when the ship went down, except that it rained. It was not blowing. There was more water in the boat the first night than on the second. The captain of the *Crescent* kept the long boat. It was better than his own, and he burnt his own. Frank Askin said, when they came to throw him over, that all he had was five sovereigns, but he would give them these if they would spare his life till morning. We had three sacks of biscuit in the long boat. Saw some beef. When they were throwing the passengers out, the boat did not capsize so as to take in water over the sides; there was plenty of room to work the boat, and for bailing and rowing it. Don't know that Rhodes had anything to do with throwing the passengers over. The passengers brought some of their provisions in the boat.

There was fresh water in the boat. Don't know how much. Was in the stern of the boat when Holmes ordered me and another girl, Bridget Nugent, to leave the boat. He said no more and gave no reason why we should leave. The second mate was named Parker. Marshal, a colored man, steward, was in the long boat. There were sixteen thrown over and seventeen saved. The cook, Murray, was a big man. Two married men, passengers, who had their wives in the boat with them, were saved. Their names were James Black and James Patrick.

Cross-examined by Mr. *Brown*. Have not been examined in regard to this matter before. My statement was taken in writing in France. Arrived in this country on 13th July last, and have been in Philadelphia ever since. Was examined before the Grand Jury and have been examined by Mr. Dallas, but nowhere else. Never was before a Judge till now. My uncle, George Duffee, was one of those thrown out. Was not related to any other person on board the vessel, nor had I seen any of the passengers before I went on board at Liverpool and did not know where they came from. Was on friendly terms with them on the voyage. Never spoke to Holmes on the voyage but once. He had never shown any unkindness be-

fore to me or Bridget Nugent. All the passengers had gone to bed that night except Mary Carr, who was sitting up with a sick girl. Can't say how many women there were on board or how many men. Know thirty-one went down with the ship, and thirty-three got into the long boat. These, with a child that died on board, made 65. In the long boat there were Mary, Sarah and Owen Carr, Julia McCaddin, Ann Bradley, Bridget Nugent, James Black and wife, James Patrick, wife and child, Isabel, Susan and Margaret Edgar, James Johnson, Mrs. Edgar, Owen Riley, George Duffee, James McAvoy, Martin McAvoy, Francis Askins and his two sisters, Robert Hunter, John Wilson, John and Thomas Nugent, Hugh Keegar, John Welch, James Todd, James Smith and myself. Had not been asleep the night the ship was struck. The shock was so violent we thought the ship was broken in two. Heard them pumping as soon as the ship struck. There were many on deck before me. Saw Holmes throwing wood and things from the long boat over the side before they launched it. The sailors were getting the jolly boat ready to put into the water. The long boat was launched by Holmes and other sailors. Bridget Nugent was in when I got in. There were others but don't know who. Don't know if there was any water in the boat then. It was not foggy nor dark. I heard Bridget interceding with Holmes and saying that he might pull her as much as he pleased, she would not get out. Holmes went on board the ship again after I got in. Don't know that he prevented anyone from getting into the boat.

Don't know who got into the boat last unless it was Holmes. Don't know how near the gunwale of the boat was to the water. About an hour after Holmes came on board with the girls the ship went down, about a half a mile from our boat. It did not begin to rain till the next day. The boats were not continually together that night. They would get off a short distance and then row up. No part of me was wet but my feet. The sailors took turns at rowing. There was no dispute during the night, all was silent. The captain took leave of us at daylight. The mate, Rhodes, said, "Captain Harris, we will have to draw lots." The captain replied, "I know what you mean, I don't want to hear any more about it." The captain scarcely spoke to any of us, did not shake hands on leaving us. We had scarcely any clothes on, as we had no time to get them. Some of the sailors took off their coats and gave them to the women.

The mate gave his coat to the Scotch family. I don't know who brought the beef, biscuit and water on board. It was very cold, but there was no sleet, nor were any of the passengers insensible at any time. They were sitting, not lying down. It was 10 o'clock at night when they commenced throwing the passengers over. Heard nothing said about it, by the mate or anybody before it commenced. The person first throw out was Riley. He had no wife on board, but had one in this city. Can't say who was

the next. Don't know who threw Riley or Duffee over, but it was one of the four sailors. Know Holmes threw Conlin over, and that he assisted in throwing the rest over. Know it was him from his voice and their calling to him. None of those thrown over had a wife or child on board. Know Askin's sister was thrown over, but not who by. She had nothing but her night clothes on, and when they were about throwing her over, she begged them to give her her cloak. Her sister was also thrown over. Don't know who by. They were all the women thrown overboard. They served out biscuit at different times. The men ate of it, but the women did not. There was no given allowance. They served out no water except to a child. The men thrown out on Wednesday morning were Nugent and Keegar. Did not see them thrown out, as I kept my head covered nearly all the time. Saw some ice about after the ship went down. It was an iceberg, at a great distance and seemed to reach to the tip of the sky. There were small pieces of floating ice which the sailors broke with the oars. The sailors first saw the ship that picked us up, and they hoisted a shawl on an oar. The mate of the *Crescent* was in the topmast, watching the ice, when he saw us. It was not more than half an hour before the ship was alongside and took us on board. We were not on deck afterwards for two days. The water came into our boat once from her canting, but I never heard them say in the boat, "God help us, we are all sinking." Mary Carr got hold of Holmes when he took hold of Conlin, and said he should spare him, as he was the last of a family of fifteen. Fourteen of his relations went down in the ship. The Scotch family used to wash and mend Holmes' clothes on the passage. They did the same for Charles Smith, another of the crew.

Joseph P. Vogels. Am a citizen of the United States. Owned the ship *William Brown* when she was lost. I purchased her from Stephen Baldwin, on the 30th of December, 1840. She was to have been delivered to me in this city, on her arrival. She never did arrive.

Mary Carr. Am the female alluded to by Bridget McGee as being up at the time the vessel was struck, nursing a sick child. The shock threw me over a box in which they kept provisions. Took the child on deck and gave it to its mother. Left the mother kneeling on the deck with the child in her arms, surrounded by her husband and her other children; they all went down with the vessel. When the two boats were about parting, the mate desired the captain to take some of the people in the jolly boat, as his (the long boat) was crowded; but the captain refused, saying he had enough in his boat.

Cross-examined by Mr. Brown. On Wednesday morning one of the women discovered that the plug in the bottom of the boat was out. She put her hand over the hole, and lent some of her clothing to stop it. The plug could not be found, and the sailors took an axe and made a new one. There were exclamations of "the boat is sinking," before and at the time the passengers were thrown overboard. The

sailors gave the cooked meat to the females, and kept the raw to themselves. Said they would save the women if they were obliged to throw the men over.

April 15.

JUDGE BALDWIN. The Court is highly gratified to observe that editors of newspapers have acquiesced in the request, not to publish the proceedings while the trial was in progress; and on behalf of the Court I offer reporters all the accommodations they may wish, or the court room can give.

Owen Carr. Am 14 years of age. Was a passenger on the *William Brown.* Was in bed when she struck upon the ice. James Black went on deck and presently hallooed for his wife to come and fetch a blanket with her for the ship was sinking. When I went on deck they were cutting the boats from the side of the ship. Tried to get in but fell out. Got in the long boat. Did not see the ship sink. The captain said we were 200 miles from Newfoundland. He had a compass. His boat left us in the night. We began to row and bail when the captain's boat left us. At ten o'clock the next day they began to throw the men overboard. The cook, Stetson, and Holmes, threw them over—laying hold of, and forcing them over. They threw over Owen Riley first and James Todd next. There was not much water in the boat at the time. Heard Holmes say nothing, except when Charles Conlin stood up and said, "Holmes, you won't throw me over," and Holmes said, "Charles you must go," and then he pitched him over. Conlin was beside me. Can't tell how much water there was in the boat when the *Crescent* came, as I was frozen.

Cross-examined by Mr. Brown. Did not see Holmes until the next morning. Don't know who came last on board. After Conlin was put out, I lost my recollection and did not recover until I found myself on board the *Crescent.* Had two cousins on board, Mary Carr and Sally Carr. I did not see them all put overboard, as it was after dark. Saw none but Conlin and Owen Riley put over in the morning. The mate wanted the captain to take some of the passengers in his boat, as his was deeply loaded. The captain said he had enough. Did not hear them say anything about casting lots. Heard nothing said by the mate, or Holmes, or anybody that day, for I fell over asleep. Did not notice the sailors give the other passengers anything. Some of the seamen served out biscuit twice. Did not see them eat or drink anything themselves. Did not hear anything said about the boat sinking. Did not take notice how near the gunwale of the boat was to the water. There were three seats across the boat. The rowers sat upon them—all the rest sat in the bottom. The mate sat all the while in the stern. Can't say when it began to rain. It began on the first night and continued to rain heavily all the time. The sea

did not roll much—it was calm. Have told my story before only to Mr. Dallas. Never saw Holmes treat any of the passengers unkindly on the voyage. There was no choice among the passengers who should get into the boat.

Mary Carr (re-examined by Mr. *Dallas*). The plug was first missed from the bottom of the boat the first night. Next morning Sarah Carr gave a piece of her dress to help make it tight. Am sure it was the first night I heard the alarm about the plug after the passengers had been thrown out. Heard the mate tell the rest to divide themselves on both sides of the boat to prevent her from upsetting. Rhodes and Norton did not help to throw the passengers out.

Ann Bradly. Was a passenger on the *William Brown.* Got in the boat with Frank Patrick and wife. Saw Frank Askin thrown over by Holmes, and three or four others. Frank was sitting between his two sisters and when they came up to him one of his sisters said they ought not to separate him from them. Holmes laid hold of him and called for the others to help him or Askin would have him over. Frank begged for his life, and said he would work like a man if they would spare him. I shifted my place to the end of the boat on the second night because I was afraid they would throw me over. The boat was not much crowded then for they had thrown the passengers over.

Cross-examined by Mr. Hazelhurst and Mr. Brown. Had a sister on board the *William Brown.* Believe she went down in the ship. The second night I heard them say the plug was lost and they got cloth to stop the hole. Saw the most water in the boat after the passengers were thrown out. It commenced raining on Tuesday morning, and continued to rain heavily until we were picked up. Did not see anyone lay hands on Mary or Ellen Askin. I heard one of Mrs. Edgar's daughters say the boat would sink. I was often afraid she would sink from the number of passengers on board, and the rain and the leak. Don't know what made me afraid. I was just afraid and that's the only way I intend to answer your question.

Julia McCadden. Was a passenger and got into the long boat. There were two sailors in her keeping her to the side of the ship. One of them told me to go back to the ship, but I refused. They first threw Owen Riley out. Holmes and the colored man—the cook—did. They first told him to stand up. I thought they were going to make him bail the boat. When he stood up they took hold of him and threw him out and he cried three times to Isabel Edgar and then to her mother, but received no answer. When they laid hold of Duffee he told them he had a wife and three children, and for the honor of God to save him for their sakes, but they told him it was no use and put him out. Frank Askin asked them to spare his life till morning and offered them five sovereigns. Said if they would spare him till then, and God sent them no relief, then he would go out himself. When the two boats were together the mate told the captain they should have to draw lots and asked the captain to keep his boat near him all night.

In the morning the captain asked if all the Scotch family were saved. He said he was glad. When Holmes brought Isabel Edgar down into the boat he put his jacket on my shoulders and told me to keep it till he wanted it. Sat alongside of the Scotch family on Tuesday night. Mrs. Edgar called Holmes to cover her. He did so and she asked him if they would throw her or any of her family out. Charley Smith answered no, and Holmes did the same, saying they should not be thrown out—that they (the sailors) would go first. On Monday night I felt some water coming into the boat very fast. They took an axe and made a new plug. For an hour no water came in at that place. Heard them say afterwards that night that the plug was coming out again.

Cross-examined by Mr. Brown. Saw no one jump down into the boat. Saw no one prevented from getting in, nor any assisted, except Isabel Edgar. When her mother and sisters cried out for her, Holmes told Charley Smith to keep the boat nearer to the ship, and said "she is safe." He then went up and brought Isabel, who cried out to her mother, "I am coming, mother, I am coming." She had been sick during the voyage. I saw no difference in the treatment of the passengers by Holmes; he gave biscuit twice to all the girls. Riley was the only man who resisted when they threw the passengers over. Holmes said Riley tore the sleeve off his jacket. Before the boats parted on Tuesday morning, the mate repeated that they would have to cast lots. The captain replied, "Say no more about it, I know what you will have to do."

Sarah Carr. Heard the mate ask one of the men if he knew navigation. The man replied "yes." Then, said the mate, "I give up all charge of the boat." Just before they commenced throwing the passengers out, I heard a voice, which I think was the mate's, say, "God help me, this work won't do—men, fall to work." Don't know what he meant. When they got hold of McAvoy he asked them to give him five minutes to pray. Some refused but Murray, the colored man, said he should have it. He then said a prayer, and they threw him out. Frank Askin told them if they would spare him till morning, and they would then cast lots, he would go out himself if it came his turn. After they threw him and his sister Mary out, they said they might as well throw Ellen out too, and they did so. After they had thrown most of the men out, the sailors looked for more and told the women not to hide them as they would not leave a d—d soul of them in the boat. Next morning they found Keegar, and they told him to get up and bail. He got up and Jack Stetson pushed him head first overboard. The mate on seeing this, cried "Lord! cruel, cruel."

Cross-examined by Mr. Brown. Heard it was in the confusion of throwing the passengers out that the plug came out. I did not see any water come over the side but once and then only a little. It was a good while before they commenced throwing the passengers over. Did not see Holmes touch anyone the next morning. Did not see anyone take hold of Askin's sisters, for

I had my head covered most of the time, fearing I should be thrown out next.

Stephen Baldwin. Joseph T. Vogels was the owner of the ship *William Brown* when she was lost. I loaned money upon her to John McRea, Jr., and took a bill of sale of her as collateral security. I made a transfer of her to Mr. Vogels when the loan was repaid to me.

Bridget Nugent. Before the boats were cut from the ship the Captain was asked to go back to the people on board, that they might all perish together He told Mr. Rhodes to speak to the poor creatures. Mr. Rhodes said, "Poor souls, you are only going a little before us." Saw the boat after it was hoisted up on the *Crescent.* A piece of it had been knocked out of the side or bottom about eight inches wide and four broad.

THE DEFENSE

April 16.

Mr. Hazlehurst. The Act of Congress, while it prescribes the punishment, turns to the common law for the definition of the offense; and manslaughter on the high seas is the unlawful killing of another, without malice, express or implied; which may be either voluntary, upon a sudden heat, or involuntary, but in the commission of some unlawful act.

Is this, then, a case for the application of the law? Is the prisoner the felon contemplated by the provisions of the Act of Congress? Does this case body forth those exhibitions of violence, heat and passion which are indispensable to consummate the crime? These are the inquiries upon which we are to enter. Let not the excitement of friends, or the melancholy and distressing recital of details, draw you from the truth, the great truth, to which your attention is to be directed. Though friend after friend may have perished on that awful night—though scenes of the most heart-rending character have been presented by surviving friends and relatives—let us press onward in the inquiry to find in the terrible reality of the case, a legal refuge for the prisoner. This course pursued, the law will be vindicated and the justice of the country satisfied.

One the 13th of March, 1841, the ship *William Brown* sailed from Liverpool, for this port. She had on board sixty-five passengers, and a crew composed of seventeen seamen—

the whole number amounting to eighty-two. Most of the passengers were Scotch and Irish emigrants who had embarked from their native land to join, on these shores, members of their respective families who had preceded them—and on the morning of the 13th March, with a fair wind, and under a clear sky, they entered upon the broad bosom of the Atlantic. Among the crew was the prisoner, a Swede by birth; he had followed the sea for years, and in reference to whom the united testimony will be that he was a kind and warm-hearted sailor. The voyage commenced under the favorable circumstances of a fine ship, a trusty commander and an efficient crew. On the 20th of April, at half past nine o'clock at night, during a thick fog, the vessel struck an iceberg and immediately commenced leaking. The sails were shortened and resort had to the pumps. An examination was made forthwith, when it was ascertained that the vessel was surrounded with ice, and that the injury she had received was too great to admit of repair, and that if the lives of the passengers and crew were to be saved they must take to the boats at once. A scene of confusion and dismay then presented itself, which I have not the power or inclination to describe—most of the passengers, weary with the monotony of a voyage which had even then been protracted beyond the usual period, had retired to rest, and were aroused from their slumbers to witness the appalling realities of the hour. The boats were launched at once—in the confusion of night, and in the strong determination to save their lives, forty-two individuals were crowded into the long boat, which, upon a smooth sea, could scarcely float with twenty. This done, a line was passed from the bow of the long-boat to the stern of the ship. The jolly-boat was then launched and made fast to the stern of the long-boat. The eighty-two individuals who, but a short time before, had sailed from Liverpool, were thus disposed of—thirty-one remained in the ship, forty-two in the long-boat, nine in the jolly-boat, and one died before the fatal night.

In this terrific position the danger was fast increasing—

those in the ship were calling upon those in the boat to save them, whilst those in the long-boat were battling with the elements to save themselves from immediate destruction. In the long-boat all was despair; she was leaky—the plug which had been used for the boat had been either lost or was insufficient for the purpose. The men were employed in bailing the boat from the first moment that she touched the water. The ship was fast sinking—the thirty-one individuals crowded together on her after-works, could now be seen stretching forth their arms for aid—friend called on friend in vain—and there was the tender relation of parent and child, and there was the father and mother, with one whole family, rushing unitedly into the arms of death; and there was the once stately ship, in less than two hours from the time she first struck, fast sinking beneath the waves. This is no fancy marine sketch—it is the awful truth, which we are to encounter in this case.

At eleven o'clock that night not a trace could be seen of the ship; and at five o'clock the following morning the jolly-boat parted company with the long-boat leaving its wretched inmates to perish beneath the icebergs which surrounded them. During the next day the weather was moderate and the sea calm. It will appear that defendant was conspicuous in his kind attention to the passengers. Most of them were destitute of clothing, and received from his hands the remnant of a few articles which were upon his person. The witnesses will detail to you many instances of his kindness. So passed the first day. The crowded state of the boat prevented her making little, if any, headway, and they lay at the mercy of the waves and driving ice. Towards evening of the first day, the sea, which had been calm now became rough, and night closed upon them under circumstances of the most appalling character. The long-boat, which, during the day, was scarcely able to float, now required the aid of all who could work to keep her from sinking. The sailors were unable to secure the plug in the boat, fearful lest the planks would start in the effort—the boat was lying with her gun-

wales on a level with the water, and was so crowded from stem to stern that the oars could not be used. The sea and ice now washed over them—those in the boat could distinctly hear the ice grating against the vessel as it rushed past them, and the boat itself was sinking!

What course was to be pursued in an emergency so awful, so sudden, and which had fallen upon them under the signal dispensation of the Almighty. The danger was instantaneous—the emergency demanded an instant effort of power—it admitted of no consultation—the mind, partaking of the character of the elements, was disturbed—there was no time for deliberation—something was to be *done*—and between the acting of that dreadful something and the first motion, all the interim was like a phantasma, or a hideous dream;

> The genius and the mortal instruments
> Were then in council; and the state of man,
> Like to a little kingdom, was suffering the
> Nature of an insurrection.

On the deck of the *William Brown* the prisoner had served them to the utmost of his power—his arm had been extended to save so long as safety was possible. He was the last to escape from the sinking ship. He had consoled them till consolation had become a mockery—and now their position had changed, for there was a mutual though innocent endangering of each other's life.

What is the active principle at such an hour of hopeless despair? Self-preservation. What will justify it? The law of nature. That great principle which is paramount to all obligations, common to all men, constant, immutable, eternal. A principle which neither the rudeness of ignorance can stifle, nor the emanation of refinement extinguish. It is the same to-day and to-morrow. It prompts men to their duty by its commands and deters them from evil by its prohibitions.

It was thus that the prisoner was impelled—there was no malice colored under pretense of necessity; there could have been none in the bosom of the mariner as he gazed upon that

helpless crowd, clinging to him on that awful night. There was no passion to swell the horrors of the dread necessity—for the arm of the prisoner was extended to protect the weak and the timid.

If the evidence will present that case of necessity which I have described, the course of defendant was justified by a principle which can only be appreciated under the terrible circumstances detailed—for the law of nature permits it not upon the principle of simple impunity—but upon a higher obligation traced to the absolute approbation of the author of all laws. The prisoner had a right to preserve himself—he was justified in lightening the vessel. The preservation of his life was lawful in itself—and the means were made lawful by being unavoidable. The law of nature when it says that a man may save himself has not limited its extent, by defining exactly how far he may go, or what he may do. It is enough to say that the *law allows it,* and this general allowance implies that no particular means of defence *can be prescribed.* Writers on natural law declare that whatever means are *necessary* must be *lawful,* because it would be absurd to suppose that the law of nature allows of defence and yet forbids us at the same time to do what is necessary for this purpose. It is this general allowance which gives to the individual full liberty to judge what means are necessary for the purpose. If he can save himself by flight he will do it—but if there is no escape, he must stand the hazard of that physical effort, which is *mightiest in the mightiest.* Looking above and beyond all consequences, strong under the influence of that great principle which presses upon every petty artery —*he must save himself.* This is the doctrine stamped upon the constitution of man by the *spirit* of his Creator.[8]

Nor are we confined to writers on natural law for authority upon this subject. The principle has been fully recognized by authority obligatory upon this court—while its ap-

[8] Mr. Hazlehurst read from Rutherforth's Institutes, chap. 16, pages 187, 8, 9, and 190.

plication has been adopted in a case precisely similar to the present.[9]

These are the principles of law, and these are the authorities safely referred to as sustaining the course of the prisoner. Under the influence of circumstances, and swayed by no sudden heat or passion, the prisoner saves the remnant of the passengers. Conscious of no error he comes to the very destination of his prosecutors. A stranger here, no heart beats for his return, no friendly voice of recognition reaches him—no arm is extended in friendship to renew the assurance of gratitude. Those voices which on the mighty deep implored his aid are now employed against him. The perils of the sea have given place to the perils of this trial—while the bold mariner whose strongest energies were invoked for them, for months has sighed behind the grating of his prison-house for liberty. But, there is safety in his loneliness. These are days for seamens' friends. The question has been met and decided—he is no longer an outcast—he is to be drawn from the influence of circumstances, and placed upon the platform of opportunity. Philanthropy has come to his rescue, and the influence of Bethels is felt throughout our marine. This court will be that friend. Its past judicial history is a history of benefits conferred, rights maintained and protection afforded. The emblem of its jurisdiction over his civil rights will be the best guarantee for his safety. These are days for Sailors' Homes. *This jury will be that home.* Here he can always find a safe harbor and here he can cast his anchor.

Walter Parker.[10] Was second Mate of the *William Brown.* The log went down with her. She left Liverpool 13th March. We had it squally during nearly the whole of the passage. We were in prospect of making the rest of the passage quickly when the accident happened about nine at night. We were running

[9] Mr. Hazlehurst read from 2 Vol. Sir Francis Bacon, p. 343. 4 Black. Comm., p. 186. 1 East's Crown Law, p. 294. 1 Hawkins' Pl. Crown, p. 168, 174. 1 Russell on Crimes, p. 783.

[10] Parker and Captain Harris were not present, but their depositions had been taken before Recorder Vaux in December, 1841, and were admitted by consent of both sides.

about ten knots, all sails set. I was on deck, it was my watch. Holmes was in my watch. Capt. Harris was on deck. It was thick, hazy weather. She struck very heavy, which drove me from my feet, and stopped the headway of the ship. We sounded the pumps and took in sail. We found two foot of water in the hold immediately. We pumped and sounded and found she was making water rapidly, then one of the men and the mate went to the forecastle and found the ship's bows were stove in. Capt. Harris ordered the boats to be cleared away—the long boat was cleared away and put over the side and I cleared the jolly boat, and after this the jolly boat was lowered down with four men besides myself and Miss Lafferty in her. After the long boat was lowered the rest of the crew came down by the boat tackle falls. Took the boat alongside the ship and took Capt. Harris and made boats fast to each other. The ship went down head foremost. In a minute nothing was to be seen. Saw no passengers. Heard them crying on board the ship, but just before she went down it was perfectly silent. The jolly boat had more on board than we considered safe. If we had taken another it would have endangered the lives of those on board. The gunwale was within four inches. Those who went aboard the jolly boat took their chance, there was no selection—sailors as well as all—the women jumped into the boat at the time of lowering her down. Saw nothing of Holmes until the morning we parted, nor of the crew in the long boat. Do not know when the long boat was last used. Saw them bailing water out of the long boat. The gunwale appeared to be about four or five inches from surface of water. If the long boat had taken more she would have been liable to have sunk with the whole of them. We kept in company during the whole night. We were not attached but kept at length of boat's oar. We could see nothing until the next morning, except that the long boat was unmanageable. It was a dim, cold, nasty morning when the sun broke. On leaving, Capt. Harris advised Mr. Rhodes to do his best to keep towards the land. They were half naked, some of them. All I heard Holmes say when we were parting was, good-bye. He was in his shirt sleeves—he gave his coat to the women. All the men were in their shirt sleeves. There was great danger in Holmes taking the girl down the sides, both of him and the woman. He was a strong man. No man of moderate strength could have done it. He brought in the last passenger, this woman, and was the last man that went into the long boat from the ship. There were two men put in the long boat from the jolly boat afterwards and one boy taken from the long boat into the jolly boat. Have known Holmes since October, 1840, and sailed with him. He was a kind, orderly and sober man and willing to obey his officers in every respect. There was no noise or confusion on board the boat when we parted with her. I have followed the sea ever since I was eleven years old and I am now thirty-two. Think the long boat was too unmanageable to be saved, from the experience I have had; even if there had been no leak, I do not think they

would have been able to have saved themselves. I recollect Capt. Harris giving his advice to the men to obey Mr. Rhodes the same as if he, Capt. Harris, was in the boat. Then Holmes made his answer, as the rest of them, that he would obey. The Captain was a skilful and humane man, 45 years of age. The next morning we saw ice very high. We would not have been saved had we not been picked up. I believe I would have been a dead man that night. The provisions were within one day's more allowance. Am an Englishman. Never heard Holmes express any antipathy to the Irish on board.

Cross-examined. All the passengers ran on deck at the first shock and were on deck when the boats were cleared away. Had there been three more persons in the jolly boat it would, by the weight, have been pressed below the surface of the water, without any storm. Our boat was as much crowded, in comparison, as the other boat. If there had been a leak and no room to bail the long boat she must have sunk in an hour. The long boat being unmanageable, I thought she would have sunk that night. By unmanageable, I mean they could not put the boat to any point for safety. They could not put her head around from one point to another. She was going around like a tub.

George L. Harris. Was Captain of the *William Brown* on her last voyage from Liverpool to Philadelphia. The crew (seventeen) were Alexander William Holmes, James Norton, Isaac Creamer, Joseph Stetson, Andrew Creager, George Collison, since dead, Charles Smith, Charles Lake, James Murray, a colored man, Walter Miller, Thomas Huff, Joseph Marshall, a colored man, Walter Parker, Frederick Humphries, John Smith, a boy, Francis Rhodes, first mate, and myself. The ship was 559½ tons. The cargo consisted of salt, coal, crockery, hardware, etc. There were sixty-five passengers. She was a staunch ship, built in New York and about 16 years of age. We had been out 35 days when the ship struck. Had it very stormy for about 22 or 23 days, but previous to the disaster had moderate fine weather. The disaster took place on April 20th, sea account—19th civil account. The day at sea commences at 12 o'clock, meridian, about a quarter before 10 o'clock, in latitude of 43 deg. longitude 49½ deg., ship going at eight knots, wind south, southwest, very dark and foggy. Was on the weather side of the quarter deck and the first indication I had of the ice was when she struck. I immediately called all hands to shorten sails and commenced pumping ship, when one of the men came aft and informed me that she ship's bows were stove in. I immediately went forward with a light down into the forecastle and ascertained the bows were stove in on both sides. There was a sheet of water coming in on both sides as large as a man's body, so that it was impossible to get down to stop the leak. Finding it impossible to free the ship with pumps, I immediately gave orders to get the boats out to save as many souls as we possibly could. Succeeded in getting the jolly and long boats out, the only boats I had. Told the pas-

sengers to get in, that some could be saved, and all could not. Made no selection, called no names but let them all take an equal chance. After as many got into the boats as could, I veered the boats astern of the ship by a line and at 11.20 o'clock the ship pitched and went down head foremost, and as she pitched her masts went out of her. For two minutes previous to the ship sinking, I did not hear a soul speak. Before this they were calling to me to take them out of the ship, but my boats were then overloaded.

I left thirty-one on board the ship, there were nine on board the jolly boat, were forty-two on board the long boat. The jolly boat was about 19 feet long and about 5 feet wide, and about 20 inches deep. It would not have been safe for any more to come into the boat. The long boat was 22½ feet long, the beam about 6 feet, and the depth 2½. The long boat could not have received any more with safety. The boats were in good condition. Whether she received any accident in getting her out I do not know—while on board she was in good condition. Saw them next morning attempting to bail, but they were so thronged in the boat they could not make out anything. If the boat had been a leaky boat, she would have gone down with them. She could not have supported one-half she had in her, had there been a moderate blow, even without the leak. The gunwale was about twelve inches above the sea. The long boat had about seventy-five pounds of bread, six gallons of water, and about eight or ten pounds of meat. The jolly boat had five gallons of water, twenty-five or thirty pounds of bread and six pounds of meat. Some of the passengers had little or no clothing on them, the women their nightdresses, the men their shirts and trousers. The sailors succeeding in saving some of their own clothing, which they distributed among the passengers. My boat was sound. Its gunwale was eight or ten inches from water's edge. Parted company from long boat about 5 o'clock in the morning. Both in bad condition in regard to the load we had. When I found the long boat unmanageable, that it was useless for me to waste time any longer there, I made for land, which was 250 miles to Cape Rays. The crew in long boat were Francis Rhodes, James Murray, Joseph Marshall, Alexander William Holmes, Joseph Stetson, Isaac Creemer, James Norton, William Miller and Charles Smith. Those of the crew on board the jolly boat were Walter Parker, George Collison, Thomas Huff, Charles Lake, Andrew Creager, Frederick Humphries, John Smith, boy, and myself. There was but one passenger on board the jolly boat, named Eliza Lafferty. Had no cabin passengers. There were thirty-two passengers on board the long boat. The names of the passengers in the long boat were James Black and his wife, James Patrick, wife and child, Mrs. Edgar and three daughters and a niece, George Duffy, John Welsh, John Wilson, Hugh Keager, Francis Askin and his two sisters, Mary Carr, Sarah Carr, and Archibald Carr, Bridget Magee, Nancy Bradley, John Nugent, Bridget Nugent, Owen Riley, James Dodd, James McIvoy,

Archibald McIvoy, Charles Conlin, James Smith, Judy McAdden, Owen Carr. These are all the names I have a list of, and this list was taken at the time I left the boat, after I supplied them with what I could spare. Advised the mate to follow me for Newfoundland, telling him the position he was in, how the land bore, and the distance, and told him to try and make the best of his way. I also told the crew to obey all the mate's orders, and to do nothing without his consent—they promised me they would do so—I bid them good-bye. I could not see them ten minutes after I left them. The weather was foggy. At the time I left them they were all tranquil and sad—they were all crowded up together like sheep in a pen, they could not steer the boat, they could not use the oars. I could not take them in tow, could hardly pull my own. The deportment of the crew was friendly to the passengers. A good crew, do not know if I ever had a better one. Holmes was kind, obliging in every respect to the passengers, and his shipmates, and to everybody—he was a first rate man, always obedient to officers—never had a better man on board ship. He has been with me several passages. The mate Rhodes, called out that his boat was unmanageable, and that there being so many in it he would be obliged to draw lots and throw some overboard. I replied, let that be the last resort. This was in the presence of all. Don't recollect Holmes saying anything. They had no sail aboard, nor on the jolly boat. Had a couple of blankets I substituted for sails. A very little irregularity in stowage would have capsized the long boat, a moderate blow would have swamped her very quickly. There was little or no wind at the time I left them. The only thing which saved us was the sea being smooth, it was cold and damp, not cold enough then to make ice, the wind did not freshen up until that night—Tuesday night. The next day I saw ice, large islands of ice, perhaps a hundred or a hundred and fifty feet from the surface of water. I saw a dozen or fifteen such islands. I was two days among it in boat before I got clear of it. The wind was very keen, what little there was. I went about twenty miles after parting with the long boat before I fell in with ice again. We were in constant apprehension of the ice, because we were well aware we were among the ice. When I left the long boat I knew there was no chance of being saved except by being picked up, and there was slim chance of being picked up among the ice, and in the fog. Made the best of my way to Newfoundland, and on the sixth day, April 25th, about daylight was picked up by a French fishing lugger, *La Mere de Famille* of Dieppe, about 150 miles from land. Had left about a quart of water, three pounds of bread and about one pound of meat. Never would have reached Newfoundland. Our strength was nearly exhausted. Were all so badly frosted we could not stand up, could not walk. Was taken to Island of St. Peters, arriving there 6th May. Went from there to Boston in the *Childe Harold,* the lady was with me. The crew I sent on ahead, three

of them, and left two in hospital, one since died, George Collison. One of those with me is here in Philadelphia, viz., Walter Parker, the second mate. Am going to sea in about two weeks, in the barque *Harriet Thompson*—Parker goes with me. Passengers were harmonious on passage, heard no quarreling of Scotch and Irish, or about Scotch and Irish on board vessel, or at time of occurrence.

Cross-examined. The long boat did not leak, saw some water in her, but don't know whether it came over the gunwale or leaked in. There was a plug in the bottom of the boat. They had at least two buckets in her. I did not move away entirely from the ship because I wished to see the vessel entirely lost before I left her. The last time I saw Francis Rhodes was in July last in Philadelphia. We got the boats in the water in about 25 minutes after I discovered the leak—discovered the leak about 15 minutes after the collision. All the persons were in the jolly boat before I got in, she was then at some little distance from the ship, so that I could not have got in unless she had come back for me, she was pulled up alongside with oars, and I got in and then she pushed off again. The long boat had a quadrant. When I left, my principal hope was of reaching the land. I also had a hope of being picked up, this hope was small on account of the fog, it was too foggy to take an observation; without an observation I could not shape my course. In fact I was not going a course towards the land when picked up. I had a chronometer and a sextant. A compass would be indispensable for keeping that course. A quadrant determines the position, how far north or south. Each boat had a compass. With the compass and quadrant the boat might have made a particular point, if manageable, but she was not manageable. Her chance was alone that of being picked up, and there were ninety-nine chances out of a hundred against her being picked up. The generality of vessels pass in the track, or about the track that I took the *William Brown.* It is the thoroughfare between Europe and America, particularly the north of Europe and the United States, It is the general thoroughfare for all vessels. There was an intense fog and heavy swell, the boat was working to leeward, this was the reason why we were attached to ship. It was partly to prevent our losing sight of the ship and of being sucked down in the vortex. It was partly to avoid being too far off and partly to avoid being too near. The long boat had not been in the water since we left Liverpool. There had been water in her during the voyage. I don't suffer my boats to get dry. She was deliberately launched, it was carefully done. Do not know if the plug was in her when she was launched. She would have filled if the plug had not been in. It would depend on the weight in the boat as to the length of time she would require to fill. If the boat, the long boat, had been manageable, they could not with the number of persons on board and their limited provisions, have reached and. The commander of no vessel knowing the position of the ice would have incurred the

risk of running in towards the long boat. If the boat had struck any piece of ice she would inevitably have gone down. There was great peril of ice for any boat. Had the sailors on board the long boat been lost it would have increased the danger of those in the long boat.

Jane Johnson. Was a passenger on board the *William Brown.* Was going into bed when the ship struck. I came at once on deck. Most of them were on deck half naked. Went down into the forecastle six times to bring them clothes. Caught hold of Captain Harris at the side of the vessel and asked him what I was to do. He said we would have to do the best we could. Got down into the boat when she was put over the side. Heard Mrs. Edgar call for Isabel. The boat was so crowded that my head was pressed almost off against a seat and an oar. Got a piece of biscuit twice, and on Tuesday a piece of beef and a cold potato. It rained hard all Tuesday. That night I heard some of the passengers say the boat was sinking. Said to Isabel we should all be lost. She said we must trust to the Almighty. Heard the mate say this work would not do and tell the men to go to work or they would all be lost.

Heard them lay hold of a man near me and lifted the cover from my head, but could not see who it was. Thought from the voice it was Riley. Heard him call on Mrs. Edgar and Isabel three times and on Judy McAdden. My head was covered all the time after, and I did not see, but I heard the others going over. I heard his sister Mary say she would die the death of her brother. Did not hear the other sister go over. When they took hold of Black, the mate said they would not part man and wife. Saw Holmes with a quilt belonging to James Patrick. He tried to raise it to make a sail, but the wind was too strong. He then stood up and saw the masts of a vessel. We were all going to rise, but he told us to sit still, as the ship would not take us on board if they saw too many of us. He walked over our heads to go to the front of the boat, to loosen the ice away with an oar. Before this the mate had asked the men what he should do. Holmes said we ought not to steer for Newfoundland, as we could never reach it, but to go south, as it would be warmer and we might meet a vessel. The mate said he would do as he (Holmes) wanted. When we got to the vessel we were taken into it, wet and stiff with cold. Can't say whether the two girls jumped over or were put over. The water in the boat was sometimes nearly up to my knees, sometimes less. I heard several say the boat was sinking, and that the plug was out. It was then the mate told the men to fall to work. Did not hear Holmes say, when Conlin gave his name to the captain, "that's Irish, I warrant." Never heard him say anything unkind or jesting. Saw him give his coat to one of the passengers. It was cold all the time and rained all Tuesday. The sea got highest on Tuesday afternoon. Saw water come over once. There was no difference in the treatment of the passengers by the crew. After Askin was thrown over, someone asked if they were going to throw any

more, and Holmes said, "No, no more shall be thrown over," that if any others were lost, they would all be lost together.

Cross-examined. Did not lie lie down but sat up in the boat. Isabel was on one side of me.

Susannah Edgar. The Captain told the mate, when he spoke of casting lots, to say no more about it, as he (the mate) knew what to do. In bailing, one man filled the bucket and another passed it over the side. It was impossible for the man that filled the bucket to get up to empty it, on account of the crowded boat. The passengers, on Wednesday morning, looked very distressed, and Holmes told them to keep their hearts up. When they were picked up and taken on board the *Crescent,* they were unable to walk, from the cold and exposure, and the sailors helped them forward to the places provided for them. The boy, Owen Carr, had his neck so bent by the cold that his shirt had to be torn from his back. Mary Carr said at the time he would have died in an hour, if not picked up. Saw a hole in the bottom of the boat after it was hoisted on the *Crescent.* The gunwale of the boat was so near the water's edge just before the passengers were thrown out, that my fingers touched the water when I grasped the side of the boat to raise up. James Todd, who was thrown over, was a Scotchman; so was James Black, who was saved. There was no difference on account of country.

Eliza Lafferty. Was a passenger on board the *William Brown.* Am a native of Ireland. I got into Capt. Harris' boat after the ship struck. James Patrick's wife is my sister. They were saved. The mate told the captain that the long boat could not live. Mr. Rhodes was the chief mate, and was put into the long boat because he knew navigation. He objected to going at first. The long boat was very full and the gunwale near to the water. The mate went into the long boat the morning after the ship went down. We were allowed a small needle case full of water served out twice a day and a biscuit cut into three parts. It was six days before we were picked up. We were all nearly dead then. Was sitting by the captain when he called the names of the passengers in the long boat. Did not hear Holmes say anything when Conlin's name was called. Did not hear anyone say, "That's Irish, I warrant."

Cross-examined by Mr. Dallas. I got into the jolly boat before she was lowered into the water. The captain and steward came in afterwards. The steward fell overboard and was hauled into the boat by the hair. Mr. Rhodes called the captain three times before he could get away from the passengers to come into the boat.

Mrs. Margaret Edgar. Isabel went with me to the ship's side after she struck, and Holmes helped me over into the boat. Don't know how Holmes got Isabel down, except what she Don't know who was on the other. Julia McCadden and Mrs. Edgar were behind me. Don't know what I sat upon. They did not bail constantly. They gave up sometimes.

April 18.

told me. There was water in the boat when I got in, and it was leaking very fast. They were bailing and I helped them. The boat was so full they could not sit apart. My daughter Margaret sat upon top of me. On Tuesday afternoon I observed that the top of the boat was nearly level with the water. Holmes took off his oil cloth jacket that day and covered my head with it. He cut up his oil cloth pants and spread them over Judy McCadden. He had nothing on after but his shirt and pantaloons. There was a great deal of water in the boat before the passengers were thrown out; was nearly covered with it, and the sea became rough for I felt it coming over the side.

Isabella Edgar. Was a passenger on board the *William Brown.* Had been sick from the time we left Liverpool until the day we struck and had not been on deck before. When the ship struck had nothing on but my night clothes. Put on my dress in the steerage and helped my mother to the side of the ship, where some one helped her into the boat. Smith told me to come into the boat through the hole in the side. The cook pulled me back and told me to go with him to the stern, that they would swing the boat round there. Fell down on deck in going there, when the cook picked me up, lifted me on Holmes' shoulders and he carried me down by the rope into the boat. Held on by one hand to his neck and he swung down by the rope holding it in one of his hands. Did not see my mother for some time after I got in. The boat was then crowded, and I could not sit down, but had to lay across Jane Johnson's and my sister Susan's shoulders. Did not see Holmes till next morning. I never spoke to him but once or twice on board the ship. When the ship was going down Holmes struck at and missed the rope that attached the boat to it, twice; the waves from the ship as she was sinking, made the boat rock. At the third blow he cut the rope. Before they could do this the cook lifted me from Jane Johnson's shoulders, for I was in their way. Our family was worse off for clothing than any of the others. The others had nearly all their clothing with them. Heard but did not see the passengers go overboard. When Holmes was carrying me down into the boat, Mrs. Anderson asked Holmes to carry her down, too, and offered to give him as much money as he could earn in a twelve-month. He said money was no object to him—all he wanted was to save lives.

April 19.

Margaret Edgar. Am daughter of Mrs. Edgar. The water came over the side of the boat on the Tuesday afternoon before the passengers were thrown out, in such quantities as to wet me all over. Nearly all the passengers were so cold as to be unable to get up into the ship *Crescent,* and were helped up by the sailors from the boat.

Sarah and *Mary Carr* and *Bridget McGee.* Were all able to get up the side of the *Crescent* without assistance, and were not benumbed by the cold. Holmes knocked or pushed Mary Carr down when she rose to get on board the *Crescent.*

THE SPEECHES TO THE JURY

George M. Dallas (to the jury): The jury must be satisfied from the testimony, that an offence against the laws of the United States was committed in the melancholy sacrifice of many of the passengers of the ship *William Brown,* but in this case the vengeance of the law was not invoked merely to punish the prisoner at the bar. There are, many circumstances in his favor, and it is gratifying to know that no verdict which can be rendered against him will reach his life. He is a young, a robust, a brave, and an adventuring seaman; but the justice and dignity of the country require that the crime which was perpetrated under the extraordinary circumstances which form the basis of this charge should be punished. The crime of which he is accused, is that of "manslaughter upon the high seas,"—a crime which, at most, is punishable by the Act of Congress of 1790, with imprisonment, not exceeding three years and by fine, not exceeding $1,000. The defendant has pleaded "not guilty," to the charge, not that he denies having taken the life of Francis Askin, but that he had no ill will towards him; that he did it, not from malice, but from "absolute necessity," and if he has proved this, I will admit, in all candor, that he could not have made a better defence. If there was an "absolute necessity" for the sacrifice of Francis Askin, then is Holmes as innocent as any amongst us. But let us look into the character of the necessity here invoked, it must not be imaginary or prospective; it must not be a creation of the fears or the fancy. It must be, a real, an impending and inevitable necessity. All necessity, strictly speaking, is inevitable, but I use the phrase as all the writers upon the law have used it, to express the urgency and reality of that necessity which must be shown, to justify the taking of human life. The jury are not to confound convenience with necessity. We are all aware that it would have been more convenient to those in the long-boat of the ship *William Brown,* if their number had been less; but this will not justify

the sacrifice of any of them. The law regards the life of one man as good and as valuable as that of any other, and will not permit one to be taken away for the convenience of the other.

By the testimony of the witnesses—by that of the captain himself, it appears that the ship was afloat two hours after she struck the iceberg, and yet the captain made no effort to save the crowd of helpless human beings around him, but answered all importunities for protection by telling those who appealed to him, to do the best they could. In half, nay, in a fourth, of the time wasted by Captain Harris after his vessel struck, with the implements and material about him, he might have constructed a raft that would have saved every soul on board. Having secured the boats to himself and his crew, he remained about his ship for nearly an hour, and quietly looked upon the sacrifice of thirty-one human beings, who had placed themselves under his care and protection. The world has heard of Grace Darling, the English lighthouse keeper's daughter, who rescued the crew of a wrecked ship with her father's skiff, alone and in a storm, and I am only sorry that I can not claim Grace and disown Captain Harris, as an American.

April 20.

Mr. Dallas. There was no real and overruling necessity for the taking of the life of Francis Askin, or any other of the passengers. Neither any of the crew, nor one of the family of the Edgars perished or were sacrificed in or after the wreck, and these facts clearly proved that the great sacrifice of human life on these occasions was the result of favor and not of necessity. What was the first inquiry put by Captain Harris the morning after the wreck? "Is the Scotch family safe?" What the next inquiry? "Are they all safe?" Again, said Mr. Dallas, what was the first natural exclamation of those who were seized for the sacrifice? It was an appeal to Mrs. Edgar to speak to the sailors for them! This singular solicitude for the safety of the Edgars

comports strangely with the indifference of Captain Harris to the fate of the thirty-one helpless creatures who went down with the ship imploring his aid; and this outcry of victims in the boat proves that the favor of the Edgars was well known to all the passengers.

The evidence shows that the boat was in an excellent condition, and disproves the allegation of necessity for the sacrifice of her passengers. The fact that the Captain of the *Crescent* kept that boat and burned his own, after the former was picked up by him, proves that she was a good and substantial boat, and in every respect competent to save those who had taken refuge in her. The assertion that she had a hole in her side as large as a man's hand, is absurd; for with such a leak, she would have sunk in five minutes under the weight she bore. The leak, by the testimony of all the witnesses, was but a slight one, and was easily kept under by bailing with a tin cup. It is true that one witness for the defence states that the water in the boat was nearly as high as the knee, at one time; but none of the others give this statement, and we must suppose the witness to be mistaken. The plug in the bottom of the boat came out once or twice, but it is shown by all the testimony that this accident was readily remedied, and it must be conclusively apparent that the condition of the boat furnished no pretext to the alleged necessity. The excuse attempted to be drawn from the condition of the passengers in the boat is equally futile. The whole current of the testimony proves that not one of them was ever insensible or helpless, and the ability they showed to go up the side of the ship *Crescent,* on the Wednesday morning, shows that they retained their senses and their strength although they might have suffered much from cold, exposure, and want of nourishment and rest.

If there was a necessity for the sacrifice of any, all should have been distinctly informed of it. The necessity, if it existed, made all equal; it levelled all distinctions, and each should have shared the fate or the danger of the others. This is the law of the ocean; it was the first suggestion of the mate

when he parted from the captain, and never is this law departed from, except when the officers of a sinking vessel shamefully trample upon those committed to their care, or gloriously give up their chances and their means of escape, and go down with their ships. It will not do for the crew of a ship to unite together for their own protection by the sacrifice of others; they must submit to an equal risk with their fellows in necessity, and endure the fate that falls to their lot, unless they be exempted by common consent, on account of their superior skill or usefulness. On the occasion now referred to, this law of the ocean was shamefully violated. There was no necessity for the sacrifice of a single individual; every one in that boat looked forward to the morrow; all had confidence in the vessel that supported them; all thought, and spoke, and acted in view of future release; but if there had been an urgent and pressing necessity for the sacrifice of some, a choice—a selection—a distinction was made, wholly incompatible with the precepts of law and morals, and which renders that sacrifice culpable. Remember, gentlemen of the jury, that your decision in this case, will be used hereafter throughout the world, by all who have occasion to cross the great highway of nations, the ocean—either to justify or condemn, to imitate or avoid, the conduct of the prisoner at the bar.

Mr. Armstrong. The evidence having been closed it is now my duty to address you on behalf of this defendant, and I know I should wrong you, gentlemen, if I did not feel assured that, as intelligent and conscientious men, you were fully impressed with the solemnity of this occasion, in view, too, of the performance of one of the most honorable and responsible of duties, empanelled under the most solemn sanction the law ordains, to try the most fearful question (if not to you as jurors, yet for reasons a generous nature will appreciate to the feelings of the accused) on this side the dread boundary of time and eternity.

When I remember the deep interest of this absorbing cause, that in the annals of judicial inquiry none is recorded

bearing affinity to it—behold the expression of attention, and observe the silence which pervades this hall, and recollect that it is now my part to speak to you upon the testimony, I feel an emotion I have not words to express, but at the same time derive consolation and support from the sympathy which I am sure beats in your breasts, and more than all, from a deep wrought, unshaken conviction of the entire innocence of him whose cause I plead. Consolation from such a source no fear should shake, but the most faltering tongue should yield, appeals, arguments, words of fire, carrying a persuasion short of the influence of inspiration only. Gentlemen, I wish to speak to your judgments, and shall not strive to excite an artificial sympathy in behalf of the accused; I have not the power if I had the inclination to do it. Should not the evidence presented create an emotion of compassion, something higher, a deep interest, something less transient, more active, nobler still, a desire to see him triumphantly released, the heart it appeals to must beat languidly.

I apply none of these remarks to the learned gentlemen who represent this prosecution, nor must I be understood to say that the view which duty compels them to take of this case is another than they would have taken had not that sense of duty intervened. The gentleman who has already addressed you has exerted all his abilities upon the side on which he stood, and they are of no common order, and he who is to follow in the same behalf will doubtless exert those capacities for which he is so well known, with an equal ardor; but let me say one word to you—do not be offended if I put you on your guard against the magic influence of great acquirements, or because of what I have just said, in the fullness of candor and honest belief, the possible disavowal of them.

Alexander William Holmes, and those in that ill-fated boat, outlived the dangers by which they were surrounded and arrive upon our shores. He betakes himself to this place, unconscious of having committed any offence, he does not conceal himself. His repose is of brief duration. Misfor-

tunes, we are told come often in a train. A common danger and an almost miraculous deliverance seem not to have engendered a common sympathy. At the suggestion, or through the exertions of those who were snatched from these terrific perils, he who, we have every reason to believe, a merciful Providence interposed as the instrument of their salvation, is brought before you to answer this serious charge. The innocent accused may be surrounded by those circumstances of alleviation which may, in a measure, lighten the burden of his sufferings; he may have friends or kindred to aid, to counsel or to sympathise. And who, it may be asked, is Alexander William Holmes? And where are those beloved through friendship or by ties of relationship still dearer? Where are those around whom affectionate recollection clings with firm tenacity? He is a lonely, almost friendless, stranger. He beholds this solemn array of justice—he looks around upon this chilling assemblage—he scrutinizes each face, but finds no welcome features, until at last he is reminded—the terrible reality rushes upon his senses—that he is arraigned—that there is not a drop of his blood running in the veins of all those he looks upon, and possibly there are few, very few, who even sympathize with him.

Much of the argument of the learned gentleman who preceded me has been devoted to a severe censure and discussion of the conduct of Captain Harris. Were this gentleman and not the defendant on trial, I should not deny the appropriateness of the discussion, though I might its justice. Captain Harris, we are assured upon testimony unshaken, has always been known as a skilful and humane commander. This, of itself should be an answer to all the learned gentleman has said; and a candid investigation of the testimony, making all fair allowance for the awfulness of the moment, will show he was alive to his duty, lost not an instant in its prompt discharge, and afforded all the assistance in his power to those under his protection. If we were to measure the justness of the alleged inefficiency by some of the accusations on which they have arraigned him, you may form some estimate of the

strength of the rest. It has been said that it would have been well had he displayed, on Monday night, some of the coolness he exhibited on Tuesday morning, when taking a list of those who were saved and furnishing them with the instruments he could spare. And this evinced a circumspection wholly unaccountable. Yes, Captain Harris, you had the atrocious coolness to procure the names of those you had every reason to believe would perish, that, should you escape, the scanty information might afford some consolation to the bereaved relatives, and you gave them a compass and told them what course to steer! I can well conceive the eloquent indignation which would have been launched at your head had you acted otherwise. But this is not all; it is the policy of the prosecution to persuade that the captain and his crew exhibited marks of superior regard to those who may be styled the witnesses for the defence, and the inquiry of Captain Harris whether the Scotch family were saved, and the noble partiality of this defendant, moved by the piteous cries of the mother for her helpless daughter, in leaving the boat and at the risk of life rushing to the rescue of that daughter, and refusing a recompense at the hands of one much better able to reward than the poor girl who had no natural protector in that ship, is alluded to in the same breath. I regret the learned gentleman did not state—he would have done so had it been upon his notes—that Captain Harris also inquired on that occasion for the safety of some of the witnesses for this prosecution. This defendant has been eulogized for his many qualities, and the gentleman congratulates himself and you that the penalty attached to the charge does not extend to life, or to a lengthened imprisonment, otherwise he would shrink from "enforcing a verdict at your hands." Whatever may be the penalty, this defendant, for the sake of that character dearer to him than life or liberty, demands a faithful investigation of this accusation.

A case so novel in its character as is this must be judged by other rules than those which guide the progress of an ordin-

ary trial. In the luminous expressions of Mr. Burke, "When the file affords no precedent, then it is that a greater knowledge of mankind, and a far more extensive comprehension of things is requisite." Yes, gentlemen, we must draw upon the great fountain of moral law, we must ascend to those high principles, the operation of which, among others, as they gave the first impulse to social organization, form the strongest barrier against its dissolution. I mean the laws of self-preservation, those which teach man's duty to himself.

The authors upon natural law, Puffendorf, Heineccius, Rutherforth, and others, tell us how far a person is excused in depriving another of life to save his own, from Bracton, who says it is not held homicide if the necessity is inevitable, and done "without premeditation of malice, and in anguish of spirit," to the latest authorities who sustain him. It was impossible to have cast lots because of the darkness and of the immediate peril, and this method is unequal except in theory, since two might be compelled to perish to save one who was equal to their united weight, or it might fall on those who were important to their final rescue. What tenderness of feeling or what energy of language could portray the mingling of despair and hope—the momentary brightening gleam and the subsiding glimmer of that horrible suspense—emotions of despair and hope, and finally of overwhelming joy upon their delivery. And if there were those who, under the circumstances of this case were persuaded they would have acted otherwise, they were wise after the trouble was past, and argued from the experience of misfortune. This is all very well, unexhausted, undisturbed, with every faculty about you, beside the cheerful blaze, in the warm security and repose of a carpeted apartment. But change the scene and circumstances, and it would be found a melancholy reverse on a broad and unfathomable deep, many a mile from land, with no place to put your foot except against a thin plank which alone divides you from inevitable destruction, among towering icebergs, in the darkness of one of the gloomiest of nights, amidst the pelting of

a pitiless rain, crowded so they could hardly move, crushed against the sides of a straining, leaking boat, at the water's edge, so that every wave threatened to overwhelm them, the boat at last sinking, when, in utter despair, with no time for deliberation, amidst the appalling shrieks of the women, amidst anguish which has no description, terror, death—they resort to the sad extremity. Who could have reasoned here, or would have been disposed to debate with himself the justice or injustice of the act? The instinct of self-preservation would have been at once the instigator, advocate, and judge.

As to the effect of fear upon others, I might instance the example of the soldier. He heeds not the approach of death because his dread announcement is made by an invisible messenger, although he sees his fellow fall by his side, he does not the more readily believe the next summons may be to him—he goes to battle with music amidst the shout of his companions, the chivalry, the rivalry—honor, glory and victory before him, disgrace and misery behind him. Alas! how many a conquest would prove a defeat if the soldier saw the approach of his last enemy as in the melancholy case before us, by some sure and horrid progress, converting the innocent agent of his destruction into the semblance of the invisible King himself, and picturing that terrible and sublime imagination of the poet, where, in describing death, he exclaims:

> The other shape,
> If shape it might be called; that shape had none
> Distinguishable in member, joint or limb,
> Or substance, might be called that shadow seemed
> For each seemed evil. Black it stood as night,
> Fierce as ten furies, terrible as hell,
> And shook a dreadful dart, what seemed his head,
> The likeness of a kingly crown had on.

The life of a sailor is full of vicissitude and peril. He knows no ease. No moment can he call his own. If he is not subject to the caprices of a thankless master, he is subject to the sudden changes of a still more capricious element. Wet, chilled and exhausted by the most hazardous exposure, he finds relief from duty, and seeks the refreshment of a

moment's repose. It may be, too, the phantoms of happier hours pass in dreams, and the sweet magic of forgetfulness lights up as it were upon the sudden, and arrays in all its brightest colors the spot sacred to him by many a dear association, cheating him into a belief that he has really crossed the threshold and heard the cheering voice of one for whom are all his hopes, and all his toils, when the hoarse cry of the watch dispels the bright vision and he is called perhaps for the last time to mount the giddy mast, amidst darkness, commotion and danger. The sailor, separated from the great world, its cunning and its selfishness, he knows no other than that little world, composed of those whose happiness in the hour of safety, depends upon those many offices of mutual kindness, and whose safety in the hour of danger hangs upon their courage and their union. He knows little of human nature, and is himself a child of nature. Generous to his injury, brave to indiscretion. From this cause is it that the heart of a sailor is a large one, and that it beats quickly for another's sorrow, that he springs on the instant filled and fired with courage and defiance to avenge another's wrongs as readily as he would his own, never meditating with generous recklessness the measure of the hazard. Who was it, knowing they were embarked in a common peril, yet feeling that tenderness inspired at the sight of female weakness and distress, administered words of consolation, and regarding the claims which humanity presented, in that chilly night, robbed himself of nearly his last protection against its inclemencies, and was ready to share his last morsel with those who could not claim it by force, and did not ask it by entreaty. It was Alexander Holmes.

The prosecution has asked you to pronounce this defendant guilty, that your verdict may operate as an example to deter. Merciful Providence! Is it to be hoped the verdict of any human jury will change the current of human nature, and alter the first principles of action? The learned counsel in urging this appeal overlooked the gulf which frowned upon him, and the plainest philosophy will concede the justness

of the inference, when I predict the tendency will be fatally opposite to that which is invoked. The mariner may say, "I shall encounter perils as it is, I shall not be able to carry every passenger, I will take none, for should I preserve some at the expense of others, they may ask my life or my liberty at the hands of a jury." Gentlemen, if you are persuaded this defendant believed the necessity was inevitable, so that some must perish for the rest, can you but acquit? This belief you will draw as well from his conduct as the circumstances. Has not his humanity, prowess and self-denial to all, and for the sake of all, been signal? You will not convict a man who you are convinced believed the necessity inevitable, and you will perceive this conclusion not only negatives the inference of motives, but takes away the vital essentials of the offence as charged.

I call upon you in the most solemn manner, I invoke you by your oaths, by every consideration dear to you, to this defendant, to law, and to humanity, here surrounded by the stillness and solemnity of a great occasion, to ponder this question, and I put it to you with an emphasis and directness inspired by its importance. Can any of you say there was no necessity for this melancholy act, that had they not done it at that time, at that particular juncture, they would in all probability have still escaped destruction on that second dreadful night? Ah, gentlemen, my heart is full, when I transport myself in fancy to that spectacle of awful necessity; no one who has not witnessed can realise one-half the terrors of that scene, and it seems to me that from its very horror it would leave but a clouded image in the recollection of its beholders as the presence of some imminent peril is the more apt to blot from our memory the mode and reason of escape. It was a period of terror, but of silence. Had the waves engulfed them there would have been a struggle —fearful! Ah! I shall not lift the curtain, let us shut from our eyes so terrible a picture. That dread visitor whose icy footstep brings him every moment nearer to each thinking, throbbing, breathing piece of mortality in this assemblage,

by one breath the less or one pulse to be deducted from those that are to beat, and to be added to the great sum against us already on death's calendar, was vivid to them in all the terrors of his awful presence. Every moaning wind that passed over them, every drop of rain which fell, every fragment of ice dashed by the surge that cast its chilling waters upon them and against the quivering sides of their frail, leaking, perishing bark, added fresh poignancy to their sufferings.

Permit me, gentlemen, to say to you in concluding, that it is not so much the lesser or greater magnitude of the accusation which this defendant heeds, it would be that any legal condemnation should be attached to that to which (under the agonizing pressure of necessity) they were impelled as the inevitable only recourse. One hour's confinement would break his spirit, the burning disgrace, not the measure of the punishment. It is, gentlemen, that he should be pointed at by the cruel mocking finger of pitiless scorn, that the disheartening word guilty should ever ring in his ears, because he was driven by the impulse of self-preservation to do that we all might have done if placed in the same trying situation, which I trust to heaven may never be. God only knows what human nature would or would not yield to, how far any of us might be able in calm composure with something more than human coolness, to sit and smile upon some yawning danger, or at what period of time the terrible struggle for existence might begin to battle with the opposing feelings. In the end that struggle should and must be triumphant, and he who would enforce another duty is at the best but a frail mortal, and knows not how he would act until the dreadful moment might arrive, until the tremendous reality frowned upon him in the shape of some heart-rending alternative. They are not the feelings of the advocate alone which influence—had I been a spectator I should have felt the same, for I hesitate not to avow that so fixed and entire is the impression of this man's innocence upon my judgment and my feelings, from the evidence we have all heard, that it almost seems to me I see it written in warning characters upon that wall, and I

tremble when I recollect that He who holds the lightnings in his hand and rides upon the storm, gave signal manifestations of his presence on that fearful night. I shall not again speak to you of the solemnity of your position or the holiness of that oath administered. You are clothed with the fullest powers. All is in your hands. And may He who rules our destinies throw His protecting shield around an innocent though unfortunate man, guide you to a safe determination and grant him an honorable acquittal.

April 21.

The court room was crowded to excess during the whole of this day, an unusual number of ladies being present in anticipation of the speech of David Paul Brown.

Mr. Brown. How wonderful and mysterious, gentlemen of the jury, are the vicissitudes of human life. How frail and precarious are our best holds upon human happiness. Man, the boasted Lord of creation, is the sport of every wind that blows—of every wave that flows. He appears like the grass of the field, flourishes and is cut down—and withers ere the setting sun—like the dews of the morning he sparkles for a brief moment and is exhaled. There is nothing earthly certain but uncertainty—there is nothing true but Heaven. What a salutary practical commentary is supplied by the present intensely interesting occasion upon the truth of this melancholy doctrine. On the thirteenth day of March in the last year, a staunch and gallant ship with a competent commander and a noble crew, with sixty-five passengers on board, sailed from the port of Liverpool, destined for that of Philadelphia; a destination, alas! which she never accomplished. For more than a month, notwithstanding she encountered storms and tempests she outrode them all, and like a thing of life held on her way rejoicing. On the 19th of the succeeding month she arrived in fairer climes and enjoyed more propitious gales; but even then, while every heart throbbed with the anticipated joy of a speedy arrival, the angel of destruction spread his broad black wings above her, and while

traversing the ocean with all sails set at the rate of ten knots an hour, she came into collision with an island of ice, and in a moment her pride was prostrate. The doomed ship was reduced to an actually sinking condition, affording scarcely time for her unhappy inmates, in the moment of their extremest need, to cry God bless us. The ocean, her favored element, of which for years she had been the pride, became her sepulcher—and the winds that had borne her upon many a prosperous voyage, sung her last sad, only requiem. Here is a scene strikingly presented in which the theories of philosophy are reduced at once, to a frightful reality.

But there is still another picture to which I would invite, and upon which I would fasten your attention. On that dreadful night, the crew and half the passengers having taken to the boats—the agonizing voice of a mother is heard even beyond the tumult and the clamor, calling for the preservation of her daughter, who in the consternation of the moment had been forgotten and remained on board the fated ship. In an instant, you may see a gallant athletic and powerful sailor, passing hand over hand, by dint of a slender rope, until he regains the vessel. And you may further behold him upon the quarterdeck, with one arm entwined around a sickly and half-naked girl, in the depth of the night, surrounded by the wild and wasteful ocean, while with the other he bravely swings himself and his almost lifeless burden by means of the boat tackle, falls from the stern of the sinking ship into the boat below, and at once restores the child to the open arms and yearning heart of the mother. Yet to-day, I say it to the disgrace of the law, after months of solitary imprisonment, you here see that self-same heroic sailor arraigned upon the odious charge of having voluntarily and wantonly deprived a fellow creature of his life, and that, gentlemen of the jury, is the charge that I am to argue and you are to determine.

I say this is what you are to determine. It may not be inappropriate, however, though certainly not vital to this cause, that I should ask your attention in passing to the real

subject in controversy, to two other indictments which stain the records of this court, referring to portions of the same transaction: the first charging the defendant with murder, which the Grand Jury promptly ignored—and the second, in the impotency of disappointed revenge, accusing him of larceny in having stolen a quilt of the alleged value of three dollars, which shared the same fate. You can form some idea of the dignity of the United States and its value while observing how it has been cheapened by itself. This very quilt, permit me to remind you, is that which was converted by Holmes into a sail for the boat, in a moment of the extremest peril, in order that he might save the lives of those very beings who gratefully appeared before the Grand Jury upon the first opportunity, in order to convict their benefactor of these imputed crimes. I shall speak of this hereafter—for the present I merely advert to it, and pass at once to more important matters.

In approaching the consideration of this case, which I do with pride, and pleasure, and confidence, I can not but express my regret, to adopt a military phrase, that I am called into conflict not only with the regular troops of the United States, but with her recently enlisted volunteers. I am sorry that my gallant friend who led on the attack so boldly yesterday, and who is a legitimate leader everywhere, should so far have returned to his first love, as to desert the white banner of innocence, under which he has lately so successfully fought, to engage once more beneath the bloody flag of such a prosecution as this. Since it is so, however, let him nail that flag to the mast. We should be happy to abide by every principle of civilized warfare, but in a mortal controversy, in a death struggle like this, we shall neither ask nor will we receive any quarter.

This case, in order to embrace all its horrible relations, ought to be decided in a long-boat, hundreds of leagues from the shore, loaded to the very gunwale, with forty-two half-naked victims, with provisions only sufficient to prolong the agonies of famine and of thirst, with all the elements com-

bined against her, leaking from below, filling also from above, surrounded by ice, unmanageable, from her condition, and subject to destruction from the least change of the wind and the waves—the most variable and most terrible of all the elements. Decided at such a tribunal, nature, intuition would at once pronounce a verdict not only of acquittal but of commendation. The prisoner might, it is true, obtain no outward atonement for nine months of suffering and of obloquy, but he would at least enjoy the satisfaction always to be derived from a consciousness of rectitude, in which the better part of the world sympathizes, and in which it confides.

Alas! how different is the scene now exhibited. You sit here, the sworn twelve, the center of that society which you represent, surrounded by the sanctions of those laws which for a time you administer; reposing amidst the comforts and delights of sacred homes; directed and instructed by a Judge who, being full of light himself, freely imparts it to all he approaches; to decide upon the impulses and motives of the prisoner at the bar, launched upon the bosom of the perilous ocean; surrounded by a thousand deaths in their most hideous forms, with but one plank between him and destruction. What sympathies can be inspired by relative positions, so remote, so opposite as these? Translate yourselves, if you can, by the power of imagination, to those scenes, those awful scenes, to which this proceeding refers. Fancy yourselves in a frail barque, surrounded by towers of ice Olympus high, and still magnified by the fear natural to man; exposed to the bleak and pitiless winds, surrounded by forty wretches as miserable as yourself; deepening your own afflictions by the contagion of grief; removed a hundred of leagues from land, and still further removed by a destitution of those means by which alone it could possibly be reached. Nay, further superadd to these horrors the apprehension of famine —of storm—bearing assured destruction on its wing, and connect all these with the scenes and terrors of the night just past; enough to appal the stoutest heart and overthrow the firmest brain; and then tell me, not what the defendant

should have done, but what the most severe and rigid would have done in trials and perils and calamities like these. It is easy to scorn the tempest while sporting with the zephyr; to laugh at the ocean while secure from its ravages and horrors; to expatiate upon the harmlessness of ice, while indulging in it, perhaps as a luxury; or to underrate famine in the abundance of your supplies; but may the Power that rides on the whirlwind and directs the storm protect you against the sad reality of those afflictions which in their mere theory are often so readily overcome by your self-secure, cold-blooded and reckless philosophy. Philosophy readily triumphs over past and future and remote ills, but present and immediate ills grapple closely with the heart, and triumph over philosophy.

Let us now come to those facts which distance and defy all the powers of fancy. Before doing this, however, you will pardon me in examining the legal character of this charge: first, as relates to the act of Congress; secondly, as regards the inherent defects of the indictment; thirdly, as respects its inconsistency with the evidence in the cause.

The act of Congress leaves manslaughter where it was at common law, so far as regards its definition—it only modifies its punishment. The punishment is not more than three years, with a penalty not exceeding one thousand dollars. You have been truly told by the opposite counsel, that the Court may reduce their sentence to a merely nominal punishment. That is the business of the Court, however, and after your verdict is found your influence is extinct. Whether the punishment is to be an hour or a year, it is an infamous punishment, and you should be equally cautious in resting your verdict upon unquestionable and satisfactory proof. I marvel, indeed, that my learned friend, while haranguing you upon the enormity of this offence, should attempt soothing you into a verdict by the suggestion that it would probably be attended with no evil to the defendant. Allow me to deprecate this questionable mercy; it is calculated, if not designed, to seduce you from allegiance to your duties. If

the defendant be guilty, he should meet the rigor of the law; if innocent, his rights should not be compromised by the imaginary insignificance of his anticipated punishment. I make no claims upon your charity—my appeals are to your justice.

Now, as to the internal defects of the indictment. The indictment contains four counts for manslaughter. That is, for unlawfully, but without malice, depriving a fellow creature of his life. Malice would elevate what would otherwise be manslaughter, into murder. The first count charges the homicide on board of the ship *William Brown,* belonging to Stephen Baldwin. The second—on board of a vessel, name unknown, belonging to Stephen Baldwin. The third and fourth are the same, with the exception of Thomas Vogels' name being substituted for that of Stephen Baldwin's. Now, these charges are incompatible with each other, and are calculated to bewilder the prisoner in his defence. They can not all be true, and as there has been no election on the part of the prosecution, a verdict upon all will involve an inconsistency obviously illegal, if not utterly fatal. The doctrine of Milton as applied to angelic existences, that, vital in every part, they can not, but by annihilation, die, is not true in its application to indictments. They are mortal in every part, and the destruction of one part of a count is a destruction of all parts of the same count. One count, it is true does not destroy another when they are at all compatible with each other, and when an election has been made, but when the charges contained in an indictment are, as in this case, totally inconsistent, if the jury should find a verdict of guilty upon the indictment generally, it will be subject to a motion in arrest of judgment, and can never stand.

Lastly, I say, if the indictment were unquestionable in itself, it is not supported by the truth. I say nothing in regard to the error in the time stated, which, in some cases might be fatal, but probably not in this. The ship, as appears by the evidence, neither belonged to Baldwin nor Vogels but to McCrea, who is not even referred to. Baldwin, however,

it is said, held a claim to her—a mortgage upon her as collateral security. That does not improve the case of the prosecution. Special property may be sufficient, but it must be special property accompanied by possession, or at all events possession itself, actual or constructive. Suppose a person were indicted for committing burglary upon the house of A. B., and upon the trial it appeared that the house was the dwelling of E. F., and that the person whose name was introduced into the indictment was merely the mortgagee, certainly the charge could not be sustained for a moment. I merely for the present hint at rather than press these objections. I shall, if necessary—which it probably will not be—have the benefit of them hereafter.

We pass now to the law more immediately connected with the facts of this case. Russell, Paley, Rutherford, Blackstone, and, above all, Lord Bacon, are the authorities upon which the entire law of the case rests. As to Puffendorf, Groteus, Heineccius, and others who have been quoted, with all their lofty pretensions, they do not contain as much wisdom or light as may be found upon each and every page of "the wisest and brightest of mankind." So far as regards the present subject, they exhibit more pedantry and casuistry than either learning or common sense.[11]

I have thus given you the law. There is but little difficulty between us in regard to it. The labor is in the application of the law. I maintain that a well founded apprehension of peril to life justifies self-defence to the extent of destroying the adversary. The opposite counsel maintain that the peril must be actually inevitable. This I deny, and say that it is enough if it be honestly and reasonably supposed to be so. An inevitable danger I don't understand. They maintain that the peril must be not only inevitable but immediate. I answer, it need be neither; but it must reasonably be supposed to be both. Suppose a plank be measured in court with square, rule and compass, upon an indictment for man-

[11] The books referred to and the doctrine of self-defence, etc., were discussed at length.

slaughter, and it be found that it would have sustained two persons, still, is he who, in his terror, supposes it would not, to be liable to conviction? Certainly not. The prosecution contends that if there be a doubt as to the inevitable peril, the defendant is to be convicted. I say it is presumed to have been considered inevitable, from the fact itself; there being no pretence of animosity, but clear evidence of the greatest kindness and sympathy. They say that if the danger were inevitable, still the defendant had no right to make selection. To this I reply that this argument involves the necessity for throwing all overboard. The selection would have been just the same, if they had destroyed those who are living now, and permitted the others to remain.

But, say they, lots might have been cast. If the peril were inevitable and immediate, that could not have been done. We hear for the first time of the casting lots in a sinking boat—where the question is whether any can be saved rather than who shall be lost. Lots in cases of famine, where means of sustenance are wanting for the number of the crew, are matters which, horrible as they are, are comparatively familiar to us. But to cast lots to see who shall go first, when all are going, is reserved for the ingenuity of the counsel, who constructs a raft on board of a ship, in the depth of night, with the prospect of her going down before he drives the first nail, or plies the first rope.

Now I have shown, if these views be sound, that apart from the preservation of the rest of the passengers, and themselves, these men could have had no inducement to take life. The magnanimity, gallantry, and tenderness of Holmes, utterly forbid the idea. Therefore it is honestly and fairly to be inferred, that they apprehended immediate peril, and were sustained by the laws of nature in acting accordingly. As to the circumstance of Frank Askin offering five guineas to preserve his life till morning, and its being refused, that so far from making against us, makes for us. If they had complied with that request, they must either have sold the lives of all on board for five sovereigns,

or have offered conclusive evidence that they did not conceive the peril to be immediate. If they had even received the money, and afterwards deprived him of life, the money itself would have been an indication, either of a corrupt motive, or a reliance on their own security incompatible with the doctrine for which I contend. It was a terrific deed, to be sure, consider it which way you will; and the very horror of the deed constituted part of its defence, as it is fairly to be presumed it would not have been resorted to, except in a case of a horrible necessity.

The fate of the two sisters is spoken of with peculiar pathos. I maintain their lives were never sacrificed by the crew. 1st. Because there is no positive proof to that effect—mere loose suggestions or inferences. 2d. Because there was not a hand laid upon any other woman in the boat. 3d. Because never mentioned by witnesses upon previous examinations. 4th. Because the conduct of the sisters shows that it was an act of self-devotion which is almost admitted indeed, and which adds another bright page to the records of time, exhibiting the fidelity, affection, and devotion of a woman's heart. Considering it in this point of view, its glory is almost equal to its horror—neither of which is attributable to the defendant.

But it is said that if the passengers had been allowed to live until the next morning, a ship was at hand. First—I answer that the probability was that they could not have survived the night. And secondly—that without prescience, they could not know of the ship being at hand. Now let us look to the next morning. The boat is still filled with water—the peril is not abated, and two more half-frozen wretches are removed—some few hours after this the vessel is discerned and Holmes and the passengers, through the instrumentality of Holmes, are saved.

As to the notion that there is any distinction between sailors and other men in their natural rights of self-defence, it is not to be tolerated. If the peril were not imminent, no man has a right to destroy the life of another for the preser-

vation of his own. If it were imminent and apparently inevitable, any man, without regard to condition, vocation, or degree, had that right. A state of nature implies the absence of all but natural law, and natural law is not to be affected by artificial distinction. A sailor is upon equality with passengers—nay, he is upon an equality with his captain in emergencies like this. With these views of the law let us turn to the facts.

On the 13th March, 1841, as has been said, the ship sailed from Liverpool for Philadelphia—she came in contact with the ice on the 19th of April—and in one hour and less was reduced to a sinking condition. The captain having unavailingly attempted the pumps, ordered the boats to be launched from the ship. Thirty-three passengers and nine sailors entered the long boat, and the captain, seven sailors, and one passenger, entered the jolly-boat. The boats were moored in the stern of the ship by dint of ten fathom rope attached to the vessel. And in a few minutes the ship sunk forever, the rope being severed at that very moment by Holmes, who was posted for the purpose.

The counsel at this point of the case indulged in a severe and unmeasured attack upon Captain Harris for having deserted the ship—maintained that he was bound to have sunk with her—that he has disgraced the American name by not having done so—and that he presents by his conduct a shameful contrast to Grace Darling, who placed her life in peril to redeem the passengers and crew from a wreck in the neighborhood of a lighthouse, of which her father was the keeper. Now this is all very poetical, very beautiful, and what embraces both, very gallant on the part of my learned friend. Rather than take the laurel from the brow of Grace Darling or any other darling, I would wear a cypress round my own, but you will still allow me to say, there is a vast difference between experiment in a life boat and almost within hail of the shore, and the scene to which our attention is here called—one hundred leagues from land—in the depth of the night, and surrounded by the wild and wasteful ocean.

The captain was not bound to do more than he did—he was bound to do all that he did. His calmness and composure in the midst of these horrible scenes contributed to save the lives of upwards of fifty human beings, although it is true, that he was not enabled to rescue those who remained on board of the ship. Their temporary rescue would have resulted finally in the loss of all. As to his sacrificing his own life, sympathy for others forbade it. If he and all of the sailors had perished, so far from its operating to the benefit of the passengers, it would have proved their inevitable and total destruction.

But, say the gentlemen, why didn't he construct a raft—he had an hour to do it in. He had no assurance of a moment—the ship was laden with iron—two columns of water of the thickness of a man's body were pouring through the stem of the ship into her very vitals. And although nearly an hour elapsed after leaving her and before she sank, how was he to determine upon the probability of her surviving the shock. The learned counsel's argument is quite consistent throughout the case. He says a raft should have been constructed because it turned out that the vessel did not sink for an hour, as he says that the men should not have perished because the ship afterwards hove in sight. But, it is said by the learned gentleman that the captain might have taken off more of the passengers. That suggestion is in direct opposition to the evidence. The gunwales of the boat were within six or eight inches of the water; a single additional person would have swamped them—and thus all must have perished, perhaps, from an ill-judged effort to save one. The conduct of the captain was not only judicious, but humane. If he had returned alongside of the ship he would have been ingulfed by the vortex, produced by her sinking—or, subjected to a calamity scarcely less terrible, by some of the inmates of the ship jumping into the boats. As to the suggestion that he might have at least rescued the children in the ship, that attempt would have resulted in the same consequence—even supposing that the perishing parents

would have been willing to sever themselves in this moment of direst emergency, from offspring more precious than even life itself. I have deemed it my duty to say thus much in behalf of an absent man, and a most meritorious and exemplary officer—not that it was by any means essential to the defence, but simply because it was an act of justice. If the captain is so disgraced now in the eyes of the prosecution—so culpable in the eye of the law, why have not our learned adversaries instituted legal proceedings against him, instead of attempting to transfer the burden of his imputed guilt to the shoulders of the prisoner? The captain's deposition was taken; he was examined in the office of the Attorney for the United States—he was within the very jaws of the Royal Tiger. Yet those jaws did not close upon him, with all their thirst for blood. Now, however, that his march is o'er the ocean wave, the counsel speak of his escape from justice, and the horrible retribution that awaits his return. This is the thunder without the bolt, or the power of Jove to wield it.

We pass now to other scenes. In the morning of the 20th of April, which was ushered in in darkness and in gloom, the two boats separated from each other—the captain and eight others directing their course, in the jolly boat, for Newfoundland, and the mate and thirty-three passengers and crew remaining in the long boat. At the time of the separation, which was on Tuesday morning, the captain directed his first officer, who had left the jolly-boat for the long boat, to endeavor to steer for the nearest point of land, which was two hundred and fifty miles off, and then having taken a list of those on board of the long boat, he bade them a melancholy adieu. In parting, the mate begged him to take some of the passengers into the jolly boat; the captain refused it as a matter of impossibility; the mate declared that his boat would sink, or they should have to cast lots, and the captain, clearly acquiescing in that probable necessity, begged that it might be the last resort. Shortly after the departure of the jolly boat, the sad series of disasters commences, which ter-

minates in the lamentable catastrophe in which this trial originated. Nothing before this point of time bears directly upon this question, although there is much in the scenes referred to calculated to touch the most callous heart. At the time the boats parted company, or shortly after, it was raining heavily—the air was very cold, from the proximity of the ice, and the miserable, half-naked passengers were benumbed by exposure and hardships, to which they had been subjected the preceding night. The long boat had leaked from the time she left the ship; the plug had, in some way, been removed, and another was substituted. The second plug was lost, and a variety of expedients were from time to time resorted to to supply its place, as well as to stop the other leaks. Added to this, the long boat was, in her situation, entirely unmanageable. The testimony of the mate and Captain, which is not contradicted by any of the witnesses, places this beyond the reach of doubt. Parker, the mate, says—"I have followed the sea for twenty-one years. I think the long boat was too unmanageable to be saved, from the experience I have had. If there had been no leak, I do not think they would have been able to save themselves." Again, upon the cross-examination,—"The long boat being unmanageable, I thought she would have sunk the first night. By unmanageable, I mean they could not put her head from one point to another—she was going round like a tub; she was like her own mistress—they could not keep her head any one way, not even for a minute." And Captain Harris is equally clear and explicit upon the subject, when he informs us—"That the long boat leaked, that they attempted to bail, but could not make out anything, they were so thronged in the boat. She would not have supported one-half she had in her, had there been a moderate blow, even without a leak. The gunwale was about twelve inches above the surface of the sea." Again, speaking on the same subject, the captain said—"I found she was unmanageable and that it was useless for me to waste further time with them—they could not use the oars—they could not steer the boat," etc. And fur-

ther—"A very little irregularity in stowage would have capsized the long boat; a moderate blow would have swamped her very quickly."

On Tuesday it rained heavily all day; the sailors were employed in rowing at times; the passengers took their turns in bailing, and it is perfectly apparent from the proof that this course continued with but little intermission or relaxation, until the dreary night closed in. At this time the wind increased, the waves ran high, at times dashing into the boat —depositing ice upon the already half-frozen passengers and crew, and at the same time calling for renewed exertion, while impairing the ability to make it. At length, abandoned to despair, the water increasing in the boat, and the peril of death being imminent, and apparently inevitable, a cry of horror is heard from various quarters, exclaiming, "We are sinking! We are sinking!" Then it was that the mate—who, unmurmuringly, had taken his post in the very jaws of death, at the command of the captain,—perceiving that everything was reduced to a state of utter hopelessness, and unable longer to repress his emotions, cried out, "Help me, God—this will not do—men, go to work." The witnesses all agree in regard to these expressions of the mate; some, however, say they were thrice repeated before they were obeyed—and finally, the obedience of the crew was the death of sixteen of the passengers, by which, alone, in all human probability, the remaining seventeen passengers and nine seamen were saved.

Then let us pause, to ascertain, if we can, what were the impulses, the secret impulses, the direct impulses that led to this deplorable catastrophe. I deny, emphatically, the correctness of the doctrine of the prosecution that if there be any doubts of the sufficiency of the cause which led to the death, the defendant should be convicted. This inverts the whole current of the philosophy of criminal jurisprudence. Doubts of motive,—doubts of acts—are always doubts of guilt, and reasonable doubts of guilt must result in acquittal. I am strengthened in this position by the indisputable fact

that Holmes, the prisoner, during the whole voyage, was upon the kindest and most harmonious terms with all the passengers—that he preserved the same friendly relation to them after the loss of the ship—that he had periled his life more than once to preserve them—that he had literally stripped himself of his apparel for their comfort—and that in short his desire to save them seemed to absorb all considerations of mere personal or individual safety. In these circumstances, to suppose anything cruel or wanton upon his part, is to run counter to everything that is possible or natural. I infer, therefore, that he supposed the peril to be imminent and instantaneous, or he never would have complied with the orders of the mate—and that the mate who gave the order, did it under the impression of direct necessity, is too obvious to require or admit of argument.

On Tuesday night, I say, that about ten o'clock, the boat filled with water from above and below, the wind having risen —the waves having increased, the ice accumulating, and the passengers shrieking with horror at the prospect of drowning —the final, fatal order was given. It is not to be supposed that these hardy sons of the sea were unnecessarily alarmed. That Holmes, particularly, was a brave, resolute and determined seaman, as well as a most humane man, no one will venture to deny—that he had but one supposable object, which was to save such as might be saved, is equally clear. I maintain, therefore, that the most favorable construction is to be placed upon his motives, and it is justly to be inferred that he acted upon the impression that the danger was imminent, and that death was inevitable to all, except by resorting to those means which he actually adopted. We are told, however, that he is not the judge. I ask, who is the judge? There is a vast deal of difference between judging in a storm and judging of a representation of a storm, and therefore it was that I said, that in order to a righteous determination of this case, your verdict should be rendered in the midst of perils such as have been described, instead of being pronounced while surrounded by all the securities and

sanctions of the law. I agree that if you can conceive of any other inducement than the desire of self-preservation and that of the majority of the passengers inducing this act, which I defy you to do, you may then imagine that that inducement led to the act, and thereby divest the prisoner of his present defence; but even taking all the statements of the witnesses for the prosecution, highly colored, I will not say discolored, as they are, and torture them as you may, it is impossible for you to arrive at any other conclusion than that Holmes was actuated by the kindest and most generous influences, and certainly I need not say that kindness and generosity are opposed to wantonness and barbarity. I repeat, then, that in these circumstances of terror, men are left to their honest determinations. They are not to resort to mere imaginary evils as a pretext, nor are they to be supposed to resort to them as a pretext. If they are in their determination, according to the rules adopted by a cold system of reasoning, their error, as thus detected, is not to be visited upon them as a crime.

Suppose two men, occupying perfectly friendly relations to each other, should be cast away, and both seize the same plank (to me the favorite illustration), and one should thrust the other off, would it not be monstrous, upon the trial of the alleged offender, that the plank should be brought into court and submitted to some men of approved skill, and measured and examined by square, rule and compass, its specific gravity ascertained, and the possibility of its sufficiency to sustain two men discussed and decided, and upon the basis of such calculation as that, the prisoner should be deprived of his liberty or his life, when, if you had placed the witnesses in his precise situation, and they had been called upon to act upon a sudden emergency, they would have done precisely what he did, and what every principle of natural law abundantly warrants. It is worse than idle to suppose that in such a critical juncture as this, men are to cast lots or toss up for their lives. In such peril a man makes his own law with his own right arm.

But, say the learned counsel, had the passengers been permitted to remain until the morning, they might have been saved by the *Crescent*. I answer, had they remained a single hour, they would have never seen the morning,—every man, woman and child would have weltered in the coral caves of the ocean. The approach of the *Crescent* could not, even in point of fact, have operated to alleviate their fears—without prescience they could have anticipated no such relief. Men are to act upon the past and the present—the future belongs to God alone.

You are told, however, that the condition of the boat was not hopeless—that she was on the great highroad of nations, and that there was every prospect of her being picked up. The gentleman speaks of the great highroad of nations over the pathless ocean as if it were the Chesapeake and Delaware Canal, in which two vessels could scarcely pass abreast. The *President* steamer sank probably upon this great high road, leaving no voice to tell her fate. Surrounded, as the boat was, by mountains of ice, no ship would probably ever have reached her if steering in that direct course. Fate itself seemed to forbid it—nay, no vessel, says the Captain, would have ventured among the ice, had the position of the boat been known, as no commander, however philanthropic, would have so far periled his own hopes in order to redeem the lives of others. The chances of rescue were entirely too remote then, ninety-nine chances against one, say the witnesses, to enter into the calculations of the mate and crew, had their circumstances even been such as to allow them dispassionately to reason upon the subject—but as it was, terror had assumed the throne of reason, passion became judgment, and you know the sequel.

I have now briefly and imperfectly passed over that part of the case upon which your decision must mainly turn; but before I close let me direct your attention to another circumstance which casts a reflected light upon the matters already adverted to. I refer to the occurrence of the next day—and this leads me to present to your view another picture in this nautical gallery.

On Wednesday, the 21st of April, the morning dawns—yet the sun still shrouds his face amidst shadowy clouds and darkness, from the traces of horror which the past night had left. You may see, gentlemen of the jury, without any extraordinary stretch of fancy, on that awful morning, a small boat, in the center of the ocean, with a single sailor, apparently engaged in an effort to rig out a sail—baring his brow and his breast to the bleak winds that howl around him, with no one to impart encouragement or aid,—deserted by earth and frowned upon by Heaven. That man was Holmes, the prisoner at the bar. His messmates have sunk exhausted into the bottom of the boat—the mate is lost in despair—the passengers are buried in hopelessness and horror—and there he stands. I say, alone, toiling and struggling to the last, not for himself, but for those very persons who, having forgotten their gratitude with their danger, now appear before you to pay for *their* own life by depriving their preserver of *his*. Whether this mode of discharging obligations shall meet with your approval, it will remain for your verdict to determine.

I have now done. I am perfectly sensible of the power of the learned counsel opposed to me, and if this case is to be determined by the comparative strength or skill of the advocates, I have much cause for alarm. My gallant friend who opened the conflict appeared like Apollo, radiant in his glory—balancing his body, adjusting his bow, and directing his shaft—his golden pointed shaft—at the very heart of his intended victim. By and by his colleague, who may be compared to Hercules, will take the field with his club, and exert all his stupendous powers to demolish this defence. Still, armed in the panoply of justice, I entertain no fear, for after all, gentlemen of the jury, what is a giant when wrapped up in a quilt? With all these odds, I therefore stand firmly by the side of that man, who always stood firmly by others. The destiny—the worldly destiny of the prisoner, is now confided to your hands. Do with him as you would be done by, for, with what judgment ye judge ye shall be judged, and with what measure ye mete, it shall be measured unto you again.

April 22.

William M. Meredith. (After reviewing the conduct of Captain Harris upon the wreck of his ship, and censuring him in severe terms for his neglect and abandonment of his passengers.) There is no essential variance between that of the witnesses for the prosecution, and that of the witnesses for the defence; and the witnesses who have appeared against the prisoner are not, therefore, liable in any degree to a charge of conspiracy to convict him. The broad and prominent circumstances of the case are in reality, undisputed. It is not pretended that Holmes did not take the life of Francis Askin; neither is it denied, on the other hand, that when he did it, all the passengers and crew in the long boat were in some peril, from the crowded state of the boat; their distance from land and the possibility of a storm; and the only point to be determined is whether that peril justified or excused that homicide. It is in evidence before the Court and jury that the boat was a substantial one; that she was provided with provisions sufficient for the sustenance of all on board for many days; that, although she was inconveniently, she was not dangerously crowded; and that there was no storm or leak to enhance their peril to that point when a resort to the last extremity of shipwrecked voyagers became necessary. But, even supposing this imminent hazard had already come, I hold it to be the law that full and distinct notice of the danger should have been given to all on board, and that lots should have been cast before the sacrifice of any for the safety of the rest would become justifiable. I protest against granting to seamen the right of making "an average" of their passengers as they would of so much cargo, and throwing whomsoever they may choose overboard, for their own safety. They are bound to protect their passengers to the last extremity, and must, at the least, share their perils and their means of preservation equally with them. The apology attempted to be given for the sacrifice of the passengers in the boat, in the assertion that they were nearly dead from cold, exposure and suffering, when they were cast

into the sea, has completely failed. Was the miserable victim insensible who tore Holmes' coat in his struggles to retain his place in the boat? Was Frank Askin "half dead" when he offered five sovereigns to be spared till morning? and promised then to sacrifice himself, like a man, if the God of Mercy did not send them relief? Was the sister of Askin insensible when she asked for a garment to cover almost naked limbs, as they were about to plunge her into the deep? No! None of these were in that condition! They were sacrificed in the full possession of their faculties; sent into the presence of the Omnipotent, unanointed, unprepared; and there has gone up from the depths of the great ocean into which they were cast, a cry for justice, which this jury can not—will not disregard!

THE JUDGE'S CHARGE

MR. JUSTICE BALDWIN (to the jury): There is no aspect in which this case can be viewed in which it can fail to excite the deepest interest in the minds of all who have heard the recital of the appalling scenes presented in the destruction of the ship *William Brown*, and the dreadful tragedy which succeeded it in the long boat. These scenes are most painful and distressing, in the description of the calamity which befell forty-seven human beings, who left their native land to find here a resting-place and home. They are still more so when it becomes a duty of the officers of justice to institute a judicial inquiry into the conduct of those who were the actors on the melancholy occasion. It would have afforded much relief to all humane minds to have been satisfied that these terrible events occurred by means which could not be averted by human power, leaving no ground for imputing to any survivor any wrongful act of commission or omission, which, in the remotest degree, tended to bring about the consequences which ensued. But the Grand Jury have made an official accusation against the prisoner at the bar, charging him with the unlawful taking of the life of Francis Askin, on the truth of which you and we are to decide; in doing

which we must overlook all feelings of pity for the sufferers, and every consideration which does not grow out of the evidence as it affects the guilt or innocence of the accused. It is our duty to instruct you as to the law by which you will apply the evidence in the case; it is your duty to decide what facts are proved by the testimony you have heard, and then, in the words of the jurors' oath, give a verdict according to the evidence, which means according to the facts you shall find, and the law which declares their effect on the accused. He stands charged before you with the crime, not of murder, but of manslaughter. His life is in no peril on this trial—be your or our opinion what it may on the evidence, any verdict rendered must be only as to his guilt or innocence of having committed manslaughter, in manner and form as he stands indicted. It is, however, your duty to carefully examine the evidence, to ascertain the cause and the manner of the death of Askin, by whom it was caused, together with the state of mind under which the slayer acted, so that from a full view of the whole ground on which your opinion is formed you can decide what crime has been committed by the prisoner, or whether he is guilty of any criminal offence. If he has committed a murder, it swallows up all other crimes, and no acquittal or conviction for manslaughter can purge the guilt of this, the highest crime known to law. Should such be your deliberate conviction, you may acquit him of the present charge, but it would leave him exposed to a future prosecution, as would your verdict of conviction, should your opinion be otherwise. The most common mode of prosecuting for a homicide, is to indict for murder, charge and find him guilty of the lesser offence of manslaughter. As this has not been done by the Grand Jury, you may not feel disposed to found your verdict either way, on any other question than the one directly presented by the indictment, unless you are satisfied, beyond all doubt, that there is nothing in the case which can exempt the prisoner from a conviction of murder on a new indictment. With these remarks we will now proceed to lay down for your guide such general principles and rules of

law as will enable you to make such an application of the evidence to the prisoner's case as to come to a satisfactory result on those questions involved. 1. Has he committed murder on the body of Francis Askin? 2. Has he committed manslaughter, or has he committed any offence against the United States? When an act which, under ordinary circumstances, is prohibited and punished by the law, is sought to be mitigated, excused or justified by the circumstances attendant on its commission, it is incumbent on the party accused to satisfy those who are the triers of his case, that it is one which is excepted from the operation of general rules applicable to the offence charged. It is, in any prosecution for a public offence, sufficient to present competent evidence of facts, tending to prove the commission of any act which the law has described as a criminal one, and subjecting the party committing it to punishment. The first inquiry is, therefore, whether the case before us is embraced within the law, on the evidence adduced by the United States. If it is, then we must inquire whether the defendant has shown an exemption from its provision. In this case the charge is the commission of manslaughter, which consists in the unlawful taking away the life of a human being, without malice aforethought. In this consists the distinctive line separating it from murder—the absence of malice mitigating the offence, and thereby reducing the degree of crime committed, in proportion to the extenuating circumstances in evidence.

Malice is an impulse of the human mind, springing from a heart regardless of social duty, and fatally bent on mischief —a design to do an injury to the person, the reputation, or the property of another. When an act is intended to take away life it is malice aforethought, as it is premeditated, wilful and attended with deliberation at the time of its commission. The time of such determination, the degree of deliberation previously had or formed, are not essential ingredients of malice aforethought. If it exists at the time when life is taken, or a mortal blow inflicted, or other act done which causes death to a human being, the act is murder.

The existence of malice may be proved by words, acts, or circumstances, before, at the time, or after the commission of the fatal deed, and the law presumes it to have been malicious if no matters of mitigation appear.

The whole conduct of the person accused, together with his declarations in relation to the transaction which caused the death, must be carefully considered, in order to ascertain the state of mind under which he acted; for on an inquiry whether a murder has been committed, we must look to the mind, the heart, the governing motives, the ruling passions which were in the ascendant at the time, with more anxiety than to the act itself, unless it is one, which, from its nature, admits of none other than a malicious design. However criminal the law may view the destruction of life, it does not inflict the penalty of murder for that offence, where the mind is not contaminated by the promptings of an evil spirit, or, as the forms of the indictment allege, is not moved and seduced by the instigation of the devil—the life of the offender is declared forfeit, not for the acts on the body alone, but when they have been committed from malicious motives and a murderous intention. Herein consists the distinction between the murder and manslaughter; in the former the crime is in the mind, in the latter it is the criminal act without a malicious intention, the law as humanely as wisely discriminating between those acts which follow a corrupt motive, and those which are the result of the infirmities of our nature, makes due allowance for even the passions of the moment, when excited without malice. Hence taking life on the sudden heat of the occasion, by an unexpected, unsought for contest with another, or by the commission of an unlawful act, not intended to inflict a grievous injury to the person of any one, but causing death in its consequences; where the thing done is in itself not an unlawful one, but becomes so by attendant circumstances, or where prudence, judgment, skill or science, is requisite to the performance of a duty, or act which may affect life, and the person performing it does not possess the required qualities, or exercises them negli-

gently or unskillfully, reduce the crime of homicide to manslaughter.

Thus death ensuing from a sudden quarrel, the resistance to a sudden attack, the infliction of a grievous injury, the commission of an outrage on a member of our family, are the common and familiar cases embraced in the law, as where the injury is not intended, results from careless driving a vehicle through the streets of a city, throwing rubbish or materials from a building where people are passing, the malpractice of a physician, or the culpable negligence of those to whom the lives of others are necessarily entrusted. In such, and all kindred cases, the law neither excuses, or permits the act or the commission to be justified as innocent; but while it inflicts some punishment, it looks with a benignant eye through the thing done to the mind and the heart, and when on a view of all the circumstances connected with the occurrence, no evil spirit is discerned, its humanity forbids the exaction of life for life. But though the cases of this description are viewed with tenderness and punished in mercy, it must be borne in mind, that in taking away the life of a fellow being, man assumes an awful responsibility to the Deity, to society, and to himself, and if the offence is not duly punished, or the act clearly justified, the administrators of public justice shift that responsibility on themselves by the indulging of misapplied humanity or inappropriate mercy.

It is one thing to give a favorable interpretation of the evidence for the purpose of mitigating such offence, but a far different one where it is sought to not merely extenuate, but to justify the destruction of human life; in the one case the law permits our actions to be in some measure guided by the most beneficent feelings of humanity, yet in the other case our rule of conduct is prescribed by the law of necessity, which alone can disarm the criminal jurisprudence of the country. When a case arises to which that law applies, it leaves no room for the operations of any other penal laws, they speak not, prescribe not, punish not, but pass over in sil-

ence and unnoticed, the commission of acts which have been done, because they were necessary for self-preservation from a danger otherwise inevitable, when there was no alternative, no choice left, but to lose our own life, or take that of another. It is, however, not a case of necessity, if any other means of preservation remain, all must be exhausted, the peril must be imminent, present, and apparently avoidable only by the destruction of another, as in the ordinary cases of self-defence against lawlessness, violence, designed to take away one's life, or to inflict a grevious injury to the person On a kindred principle to self-defense, the law overlooks the taking of life under circumstances of imperious necessity, of a character similar to those which are now in evidence before you; as where two or more persons have by an accident not attributable to either, and who owe no duty to the other which is not mutual, been placed in a situation where all can not survive; no one is bound to save the life of another by the sacrifice of his own and no one commit a crime by saving his own in a struggle for the only means of safety. Of this description are the cases which have been put to you by the learned counsel in this cause, from writers of authority upon the principles of national and municipal law, where each person is alike innocent of crime or fault, in incurring the danger to the lives of all, and the sacrifice of one or more is necessary to save the remainder, cases which we rather leave to your imagination, than attempt to describe. Yet in such cases we must look not merely to the jeopardy in which the persons are placed, we must look to the relation in which they stood to each other, inquire whether the law has imposed any duty or obligation on one or more, from which the other was exempt; if in this respect each and all stand in the same relative position, the law of self-preservation applies. And when this great and paramount law does apply, and the exemption it affords from punishment is not lost by its improper exercise on the devoted victim, the shedding the blood or taking the life of an innocent person, is divested of all im-

morality, by reason of the overpowering necessity under which it was committed.

It is a common saying, that necessity has no law—it is also a maxim of jurisprudence, for laws are made to meet the ordinary occurrences of life, where man is a free agent with a volition to do an act as he chooses; but the law makes no provision for cases where man acts from an impulse which he can neither resist or suppress by the exercise of his reasoning faculties, he then becomes his own legislator, and may surrender his own life, or save it as he can, when no law or duty imposes on him the obligation to devote himself to destruction to save another. But before the protection of the law of necessity can be invoked, a case of necessity must exist, the slayer must be faultless, he must owe no duty to the victim, be under no obligation of law to make his own safety a secondary object, and if in any of these particulars his case is defective, he is answerable by the law of the land, without any immunity under the shield of necessity.

A practical and familiar application of these principles will be found in the law which prescribes the duties and obligations of the owners of stages, steam boats, railroad cars, vessels of all description, employed in the transportation of passengers and all persons employed therein, all are bound to transport them safely, under every responsibility for prudence, skill, and discretion. The owner must answer for all he employs, to the extent of all civil injuries sustained by any violation of duty by those he employs. The persons employed are answerable to the law as criminals, if a grevious injury is done to a passenger, or their lives lost by gross misconduct, or culpable negligence of their duty to protect and carry them to their place of destination. As this responsibility rests on them, they have the entire command and direction during the journey or the voyage in all its emergencies. The passengers looking to their care, can exercise no control over them or interfere in any manner with the arrangement of the vehicle in which they are carried, but must submit to the

orders and direction of those who represent and act for the owners. To them the passengers owe no other duty than submission, there is no mutuality of obligation to protect and keep in safety; a passenger is bound to no labor or service unless in case of an emergency, when it is required by the common danger; by payment of his fare, he has a right to demand the performance which the law imposes on those who undertake, or assume on themselves to carry them safely, and is subject to none of the perils to which the law exposes the driver, the conductor, the captain, officer or hands. Such is the relation of the passengers to the officers and seamen of a ship. Their position is entirely different in any respect in which the law views their relative rights and duties—in ordinary cases the rights are on one side, the duties on the other; the sailor must encounter all the hardships and perils of the voyage, from which the passenger is exempt; it is only in cases of some peculiar kind, that they are bound to take their part in the management or working of the ship. When the ship is lost by a tempest or accident, and the passengers and crew take to a boat for their common safety, the relation between them continues the same as when they were in the ship, the imminence of the danger absolves the seaman from no duty to preserve the boat and passengers, at the same hazard which he was bound to encounter on board the ship, nor is any new duty imposed on the passenger, if there remains a competent number of seamen to manage the boat safely. If, however, from any cause the sailors can not do this, then the passengers are bound to perform whatever labor and services the common safety requires; they must as far as they can, take the place, and do the duty of sailors if sailors are wanted, but if they are capable and sufficient in number to save the boat, the passengers are not bound to make common cause with them, in either the toils or dangers of the emergency. Should it become so extreme, and the common dangers imminent as to call for the sacrifice of life, the law is the same and for reasons which can not be questioned; the sailors' duty does not cease, but becomes more imperious

as the necessity becomes the more apparent—the passengers' duty is not assumed till necessity calls for his action. And he can not surely be under any obligation to devote his life for the preservation of others, when he is bound neither to labor or incur the risk of life, nor can it be a passenger's duty to take on himself the protection of a sailor when he has a right to call on the sailor for protection, the former need not take, and the latter can not throw off the dread responsibility; there must indeed be a sufficient number of seamen to navigate and preserve the boat, but if there are more than sufficient for these purposes, the residue have no right to call for the sacrifice of a passenger for their protection. There can be no contribution in such a case, the sailors and the passengers are not in an equal position; in the language of the writer quoted by the defendant's counsel, the sailor "owes more benevolence towards another than to himself," is bound to set a greater value on their life than on his own, and the law makes it his duty to say, in the words cited by Lord Bacon, "it is necessary that I should go, not that I should live." This may be deemed a harsh rule partaking of cruelty to the sailor, who has thus far done his duty, but when no hope remains save the dreadful alternative of sacrificing a sailor or a passenger, it would be still more harsh and cruel to make the passenger a victim, to save the sailor who was not wanted for the preservation of the boat. If its safety requires the services of all the sailors, and some of the passengers must go, they stand on an equal footing towards each other; so if there are no passengers and some of the sailors must go, in either case they may contend with each other for their own preservation—two sailors may struggle with each other for the plank which can sustain but one, but if the passenger is on it, even the law of necessity justifies not the sailor who takes it from him.

The emergency which creates the necessity for one or more victims, gives no authority to any one to make a selection among those, between whom and himself there are mutual and equal relations; some mode should be adopted which

exposes all to an equal peril and gives each an equal chance of life. What that mode is or ought to be, is neither defined by the writers on the law of nature, by statute, or settled rules of the common law, for obvious reasons arising from cases of necessity, which can neither be foreseen or provided for. There is, however, one case on which all writers agree, and one rule which seems to meet with universal consent; when the ship or boat is in no danger of sinking, and all sustenance is exhausted, whereby it becomes necessary to make one a sacrifice to appease hunger, the selection is by lot, that being resorted to as the fairest mode, and deemed to be in some measure an appeal to Providence to choose the victim. Such is seemed to be impressed on the mind of the mate in this case, as the rule, and the law by which he had resolved to act, in case the boat could not live with all who were on board at the time he parted with the captain, from whose answer the same impression must have been on his mind as to the law of necessity, when he enjoined the mate not to apply it except in the last resort. In the book of Jonah we are told that it was the mode adopted by the mariners of his time. "And they said every one to his fellow, come let us cast lots, that we may know for whose cause this evil came upon us."

We have neither heard, read or known any other mode and can conceive none so consonant to justice and humanity. A sudden, unforeseen peril may preclude any deliberation or consultation, when destruction may follow upon all while casting lots, or the darkness of the night prevent it; but when the source of the danger has been seen, and no new cause has arisen, so that there was time to consult, to cast lots, or select the victim, it is a duty to do it, in order to guard against partiality, oppression, violence or contention, and thereby put the weak and the strong on the same footing. Imagination can not conceive a scene more horrible than a struggle between sailor and sailor, passenger and passenger, or in a mixed affray, in which each endeavors to destroy the other, under circumstances which most loudly call for some fair and

just means of deciding whose life must be given up for the common safety. When it is done by lot, the victim submits to his fate—if attempted by force their common destruction might be inevitable, in the struggle which each would make to preserve himself, and has a right to make, when the law of necessity is enforced contrary to those rules by which alone it can be justified. If the lot is cast, the person on whom it falls must submit; if he resists force may be employed to put him over, or if the necessity of a sacrifice arises from famine, the allotted victim may be seized and slain. When thus administered the law of necessity supersedes all other laws. It operates as a dispensation from punishment, with all the lasting effects of a pardon for the act. When the survivors can make out such a case, they need not fear human laws which do not doom them to death, to prison or fines for taking the victim's life, or that innocent blood will be laid to their soul hereafter; but a fearful peril awaits those who take on the destruction of life, by assuming that it is necessary when no necessity exists, or its rules are not observed. In this respect those who execute the laws of necessity by the infliction of death, stand in the same position of responsibility to the penal laws of the country as the public officer who executes a death warrant on a convicted criminal—he stands justified in both cases, when he acts pursuant to the warrant of the law, but without justification when he disobeys or departs from its requirements, in any particular whereupon his authority depends.

When the authority of the law under which death has been indicted in either case, has arisen or been properly exercised so as to hold the executioner harmless, it can not depend on his own opinion; no man can be the judge of his own conduct which affects the rights of others. His motive may be pure, his heart and conscience clear, but he may mistake the law, may overlook his duty, omit what he ought to do, and forget what is required before he does the deadly deed—were a contrary principle to be sanctioned, and become the law of the sea, you will at once perceive the consequence—

passengers and sailors will be alike their own judges, and the supreme arbiters of life and death; if without notice, consolation or lot, the seamen may sacrifice the passengers, where is the law of God or man, which denies to them the concomitant and equal right of making the former the victims? They may have confidence in their capacity to manage and preserve the boat, or by being unmanageable, with every skill or nautical knowledge, however great, they may be left to the mercy of the winds and waves, when the efforts of sailors and passengers may be equally unavailing to save. Hard as is the sailor's life, severe as is his duty, would it not be still more perilous if the law is established that the passengers, who may outnumber them ten-fold, are made the judges of the emergency which would give them the right to take the command and sacrifice all others? Take the case before you, sixteen male and seventeen female passengers in a boat with nine seamen, and where is the security for the seamen in a struggle against force and numbers? You will probably agree with us that in these heart-rending scenes the sailor's safety best consists in the observance of these rules of law which make it their duty to protect the passengers, at every hazard to which their employment subjects them. While they obey the law it will throw over them its panoply, and their boat will be an ark to protect them against force or numbers.

The Captain and such of the seamen as are necessary to the preservation of the ship or boat, are not bound to draw lots, *for unless these abide in the ship all will perish.* This is the sailor's privilege, his high prerogative, conferred on him for the common safety, clothed with which he is exempted from other risk of life than what attends the seaman after the immolation of those who have been doomed to death for the sake of others. But this privilege, or exemption, is founded on reasons which must not be disregarded. The law does not favor him merely because he is a sailor, it is as the instrument of common preservation—not to prefer his life to others, or absolve him from any duty incumbent on him

in virtue of his occupation, or relieve him from any of its incident perils. When the reason of the exemption ceases, the supernumerary or the useless sailor stands without any privilege, the common safety not requiring it, he must submit his fate to the casting of lots, and if it falls on him, the law does not justify him in resisting, or putting another in his place. Nor is the seaman less an offender against the law if the ship or boat is in a situation where there can be a consultation as to the degree of danger, and the necessity of drawing lots, if the exegency has not happened, though probable or certain at some future time, and neither takes place, to justify or excuse the omission of either consultation or lot, there must be a case of necessity made out, strong, clear and decisive on the minds of those whose duty it is to closely scrutinize on his trial, the conduct of the man who takes the life of his fellow man. Without consultation, who is to decide—who shall the victim be, and how many? Who that looks to the consequences here or hereafter will not shudder at such an appaling responsibility? Where is the warrant for his being the judge, and making his mere opinion, fatal to the devoted objects of his assumed powers? Holy writ tells us what was done on an occasion when there was a sacrifice of one man made for many, and points to the compass by which mariners must steer when their voyage is beset with perils to the lives of all.

We have thus given you, at large, the principles of law which may bear on the merits of this case in whatever light you may consider it, not merely from its intrinsic importance, the interest it has excited in public opinion, as a precedent in future cases, but from its novelty; neither the researches of the learned counsel or our own investigations have led us to the knowledge of an occurrence of the same character as this. Yet there are general rules which, though they may not cover the case before us in its four corners, serve as safe guides to instruct us in applying the law to the very circumstances of occasions as they arise. In doing this we feel satisfied that our instructions to you on the law conform to

those maxims of jurisprudence which have been sanctioned, approved and settled by the wisest and best jurists of all ages. On the one hand, we must remember that when man assumes to be the arbiter of the life or death of his fellow man, he acts by a right which transcends all human rights, and exercises the attributes of the Deity, so far as human nature can do it. We need not say to you that on an occasion so solemn, so awful, so shuddering to humanity, the man who exercises such fatal authority ought to be himself on the verge, the brink of eternity before he dares to raise his hand against one life, still more when the infliction is on many. On the other hand, we must look cautiously, humanely and most benignly on the situation and conduct of persons who are exposed to danger which is threatening in the extreme, urgent, inevitable, and apparently instantaneous, without some desperate action, and when with a pure heart, on the instinctive impulse of nature, for self-preservation, they do a deadly deed, which alone can save themselves, it is neither your duty or ours to consider them as offenders against any law. If they stand innocent in their own consciences they may rely on mercy before their Judge hereafter, and will receive it here.

April 23.

The jury, after remaining in consultation during the afternoon and night of Friday, 22d, rendered a verdict this (Saturday) morning, pronouncing the prisoner GUILTY, but recommending him to mercy.

Mr. Brown moved for a new trial on the ground that the Court erred in not charging the jury that in a state of imminent and deadly peril all men are reduced to a state of nature and there is then no distinction between passengers and sailors and argued. He also made formal objection to the indictment. MR. JUSTICE BALDWIN after holding the case for some time under advisement, refused a new trial, reiterating his opinion given in his charge to the jury that "the

sailor's duty is the protection of the persons entrusted, not their sacrifice, a duty that rests on him in every emergency of his calling and from which it would be senseless indeed to absolve him exactly at the time when the obligation is most needed," and sentenced the prisoner to imprisonment in the penitentiary for six months and to pay a fine of $20.

Much sympathy was excited in favor of Holmes by the press and efforts were made to obtain his pardon which, however, were unsuccessful, as President Tyler refused it on the ground that the Judge had not joined in the application. The fine was subsequently remitted.

THE TRIAL OF SIMEON L. CROCKETT FOR ARSON, BOSTON, MASSACHUSETTS, 1835

THE NARRATIVE

Simeon L. Crockett was born at Lisbon, Maine, in January 1809, and learned the trade of wheelwright with a brother. Before he was of age he met with an accident by falling from a load of hay from which he suffered all his life. Later he married and resided in Bangor following his trade until May 1835, when he went to Boston on a lumber vessel where he made the acquaintance of Stephen Russell with whom he went to board. The two became cronies, and, though Crockett worked for Joshua Benson for six weeks on the very building that was burned,[1] they spent most of their time fishing, loafing and drinking.

About midnight of October 22, 1835, a ramshackle wooden tenement house owned by Joshua Benson on South Street Place, Boston, and which sheltered nineteen or twenty Irish families—over one hundred persons in all—was discovered to be on fire.[2] Many of the inmates were awakened from their sleep by the alarm, and, though the fire spread very fast, all escaped, though narrowly, and there was no loss of life. Crockett, besides knowing the building from having worked on it, frequently visited families living in the house, and was there the very evening of the fire.[3] He also busied himself helping the lodgers to remove their goods.[4]

Crockett being out of work on the morning of the day of the fire went to a shipping office to get a job as a sailor and there fell in with Abraham D. Freeman (who on the trial was the principal witness against him). They took a walk

[1] Joshua Benson, p. 443.
[2] John Hammond, p. 449.
[3] Margaret McVity, p. 444.
[4] James Donnahue, p. 444.

together and Crockett invited him to his lodging; on the way they stopped at a public house and met Russell who parted from them, after which Crockett conducted Freeman to Russell's house where Crockett lived. After supper there was a tapping at the window and both went out and found Russell. They all went to the house on South Street Place where they drank and sang with a number of the inmates. When they came out of the house the three sat down on a pile of wood and Crockett told Freeman that they were going to touch off the house and adjured him to tell nobody. Russell asked Crockett if he could make it go, and the latter assured him that it would as he would set fire to a lot of shavings in the cellar. Crockett then left and in a while returned and reported that he had set it in the cellar and that it would blaze in a minute. Then Freeman saw a light and heard the scream of a woman, and, becoming frightened, shouted "fire," and took his part in working the engine. When the fire was extinguished, he hastened to find some one to tell his story to; tried to see the Mayor and was directed to the Fire Chief[5] to whom he told of Crockett and Russell's actions and statements and conducted him to the Russell lodging where both men were arrested in bed.

Russell and Crockett were tried separately and though Russell was convicted, there is no report of his trial. Crockett's trial lasted three days before Chief Justice Shaw, the whole case turning on the truth of Freeman's story, which the jury evidently believed, for, after an absence of two hours, it returned a verdict of guilty and both prisoners were sentenced to death by the Chief Justice. They were hanged together on March 16, 1836. The night before his execution, Crockett delivered a written confession to the Rev. E. T. Taylor who attended him at the scaffold. Though Crockett had had a dispute with one of the lodgers in the burned house and had threatened vengeance, the motive for the crime it seems clear was either to make more work for carpenters[6] or

[5] John Hammond, p. 449.
[6] Hiram D. Freeman, p. 447.

to claim the reward which the city offered for the arrest of incendiaries.[7]

THE TRIAL[8]

Before the Supreme Judicial Court of Massachusetts, Boston, December, 1835.

HON. LEMUEL SHAW,[9] *Chief Justice.*

December 15.

The prisoner was jointly indicted with Stephen Russell for designedly, feloniously, maliciously and wickedly setting

[7] Hiram D. Freeman, p. 449.

A case which was decided by the Massachusetts Supreme Court nearly ten years later is in point here. The plaintiff alleged that the Mayor of Boston had in March, 1837, published the following in the city papers: "$500 REWARD." The above reward is offered for the apprehension and conviction of any person who shall set fire to any building within the limits of the city," and in May the following "$1000 REWARD. The frequent and successful repetition of incendiary attempts renders it necessary that the most vigorous efforts should be made to prevent their recurrence. In addition to other precautions, the reward heretofore offered is doubled, $1000 will be paid by the city for the conviction of any person engaged in these nefarious practices. Samuel A. Eliot, Mayor." The plaintiff alleged that in 1843 he had caused to be arrested and sent to the penitentiary an incendiary of a hotel in Boston who fell within the terms of the offered reward. The city defended on the ground that the offer had expired at the time of the plaintiff's performance. The only question considered by the Supreme Court was one of law, viz., whether the offer of 1837 which had never been formally withdrawn, continued to be in force when the hotel in question was burned. This they decided in the negative, holding that an offer of a reward published in a newspaper comes to an end in a reasonable time without the necessity of its being actually withdrawn. (*Loring v. Boston*, 7 Met. 409.) On the trial the Chief Engineer of the Fire Department of the City testified that before the advertisement in 1837 alarms of fire were frequent but that from that time until the end of 1841 there were few fires in the city.

[8] *Bibliography.* The only account of this trial is a pamphlet published in Boston in 1836 entitled, "A Voice from Leverett Street Prison, or the Life, Trial and Confession of Simon L. Crockett Who was Executed for Arson, March 16, 1836." The pamphlet is adorned with two wood cuts. One (p. 1) is a picture of a low bar room. Three men are sitting on chairs and one standing at the bar is being served from a bottle. On the wall is a sign "No Trust" and a notice of a Sheriff's sale. The other (p. 20) shows the Rev. E. T. Taylor re-

fire to and burning the dwelling house of Joshua Benson, South Street Place, on Haskin's Wharf, Boston, at or about twelve o'clock on the night of October 22, 1835. Counsel for Russell moved that his client be granted a separate trial which motion the Court granted.[10]

Mr. Parker[11] for the Commonwealth. *Robert C. Winthrop*[12] and *Mr. Blake* for the Prisoner.

Mr. Parker for the Commonwealth opened the case and explained the seven counts in the indictment which variously alleged the ownership of the building burned, severally describing it to be the dwelling house of Mr. Benson, or of certain of his tenants, or of the mortgagees and Mr. Benson jointly. He defined the law of arson and told the jury that by the statute of 1804 the punishment of death was prescribed for setting fire to a dwelling house in the night time, there being persons in it at the time. He also stated the evidence he would introduce to sustain the charge.

WITNESSES FOR THE COMMONWEALTH

Joshua Benson. Am owner of the building burned. The entrance to the cellar was by steps outside; there was no fastening to the door. The fire began either in Ryan's or O'Brien's cellar, under O'Brien's room. The cellars were separated by planks; the partition was wholly consumed and the floor above nearly so. I had known Crockett for two and a half months before the fire. Employed him as a carpenter on the building that was

ceiving Crockett's confession in his cell. The report of the trial seems to have been printed as a tract in favor of temperance and a warning against the use of intoxicants.

[9] SHAW, Lemuel (1781-1861). Born in Barnstable, Mass. Graduated from Harvard in 1800. Member Massachusetts Legislature, 1811-1819. Senate, 1821-1829. Became Chief Justice of Massachusetts in 1830 and held it for 30 years. Was the greatest of Massachusett's great Judges.

[10] Russell was subsequently tried and convicted.

[11] PARKER, Joel (1795-1875). Born in Jaffray, N. H. Practiced law and became in 1847 Professor of Law in Harvard Law School. Was the author of numerous works on law and constitutional history.

[12] WINTHROP, Robert Charles (1807-1894). Born in Boston. Graduated from Harvard in 1828. Studied law with Daniel Webster. Member Massachusetts Legislature, 1834-1849. Speaker, 1834, 1840, 1848. Representative in U. S. Congress from Boston fifteen years. U. S. Senator, 1855. Was a voluminous writer on historical subjects.

burned. He left me a month before the fire without telling me. I intended to discharge him, but had not told him so. Owed him for three days work, but he did not come for it and as he had lost some days while he worked for me I considered we were square. Crockett knew my apprentice Hiram Ferguson who left since the fire. He seemed to be intimate with him.

Philip O'Brien. I had lived eight weeks and three days in the house that was burned—paid fifty dollars in advance and was to pay seven—and—sixpence a week. Patrick called me three times and smashed in the window before he waked me. Before I got my last child out the floor of the passage was on fire. Shavings used to fall into the cellar from the top of the building when they were at work there. Had seen Crockett four or five times when he worked on the building. Had not been in the cellar that day.

James Donnahue. Lived in the house on the north side. When I heard "fire" I got up and saw the fire crossing towards our windows from the cellar. Crockett came to the door and wanted to help me with my trunk. I said no we had help enough. Knew Crockett before. Saw him helping other folks.

Patrick County. Lived next door to O'Brien's. Was waked by cry of fire and gave the alarm as fast as I could. Called three times and could not waken them until I had broken in the windows. The engine came before I got out my last child.

Margaret M'Vity. Lived in the lower part of the house in one room and two bed rooms. Crockett worked on the building and was in our house often afterwards. On the night of the fire, about nine Russell came in and inquired for Crockett. Russell had been to our house with Crockett four or five times before. Told him Crockett was not there. Had not been for three or four days, thought he was offended at something my boy had said to him. He said Crockett was to meet him there and settle for his board, as he was going to ship the next day. Half an hour afterwards before Russell left Crockett came in. Asked Crockett where he had been and if he had been offended at what my boy said. He said, no—he said he couldn't stay long as he had a friend outside. Told him to ask his friend in. He went out and brought in Hiram Freeman. There were in my house that evening Mr. and Mrs. Roach and Mrs. Johanna Gordon and Mr. and Mrs. Johnson, my boarders who were in bed. There was also a woman, whose name I don't know, who came in the morning and said she wanted to stay during the day, as she was a stranger, and had no place to stop. Russell and her seemed to be acquainted, for they shook hands, and appeared to be surprised to meet. Freeman did not say much. Thought he had some weight on his mind or because he was in a strange country. Crockett said he was going to ship, at $17 a month, to go to the South, in the same vessel with him. It was getting late, and my husband said that it was time for every honest man to go to bed. My husband followed Mr. Russell into the entry, to ask about the strange woman and Russell said her character was no great. My husband told her to

get her cloak and bonnet and leave the house. I looked up at him with astonishment—asked him what he meant by turning the woman out in a strange place in the cloud of the night. I said she might be insulted, or the watch might take her up. My husband replied, that it was his opinion that she knew more about the streets of Boston than either him or I—and he made her go out. There was singing in our house. Russell called for liquor. Heard Crockett once say he wished the old building was burnt down—and that it was not fit for any person to live in. It was when he worked at the building. It was on the night the distillery was burnt. Never heard Crockett say anything uncivil about Mr. Benson.

Cross-examined. Washed for Crockett occasionally. My husband persisted in turning the woman out, though I shed tears. Did not know at that time that Russell had said anything about her. While the fire was burning I saw her. She said to me, "you are burnt out." I have not seen her from that day. Have heard almost everybody wish the house was burnt down. One night Mr. Johnson was sick and Mr. Crockett made some gruel for him and believe went into Mr. Roach's for some salt. When Russell, Crockett and Freeman went away it was not earlier than ten. It might have been past. They went out first—then the woman was turned out—then my husband went to the foundry, where he has to see to the fires in the night, and the ovens—then I went to bed. Went to sleep. My husband waked me, and told me our house was on fire.

James Crowley. Was a resident in the house burnt, had seen Crockett, when he worked on the building. One evening he knocked at my door and said he wanted some salt for a sick man. Gave him the salt in my naked hand. He did not like to have me give it to him in my hand. I told him it was well enough for him to get the salt at all. He did seem very cross.

Judith Crowley. Am wife of preceding witness. Between nine and ten that night, some one came to our door and inquired for Russell or Crockett. We were in bed. Before I went to bed I went to the front door to throw out a pail of water. Two men were sitting at the steps of the door, and one was standing by the side of them. Crockett was one of the men. The morning after Crockett came for the salt, I went up into the building where he was at work for some shavings. He told me I should not have any and said my husband had offended him and he would be sorry for it. I asked what he could do. He said time would tell. I told him if anything did happen, he should be accountable. He has never spoken to me good, bad, nor indifferent since.

Philip Roach. Lived in the house burnt. On that night was in Mr. M'Vity's on a visit. Russell came in and inquired for Crockett. Told him that Crockett had been in at my house in the evening inquiring for Hiram Ferguson. The party was pretty merry and I sang a song for them, and went for liquor for Russell.

Michael M'Vity. Thought it was near ten o'clock when Russell, Crockett and Freeman came in. Roach went for liquor. I

said it was time for honest people to be in bed. After they were all gone, I went to the foundry to attend to my fires. Came back in about twenty minutes. Dozed asleep before the fire. Went into the bed room and took up my child that was sick with the whooping cough. Laid her down, came out, trimmed my lamp and went towards the door to see if all was right, and discovered the fire. Waked up my wife to get the children. I was the first person that got the engine.

Rufus Rice. Lived at 42 Essex street. While returning from the fire, just as I got to my door, a man accosted me and said he had something which he wished to communicate. Freeman was the man. I heard what he had to say and went to inquire for Col. Amory, whom I had seen at the fire. I communicated to Capt. Carleton, of No. 20, that I had information respecting the fire. He referred me to Capt. Hammond, the Chief Engineer. Capt. Hammond and Carleton, Engineer Warren, Freeman, myself and some of number twenty's men went to South Boston and with Constable Andrews took Russell and Crockett in bed.

Hiram D. Freeman. Am from Monmouth, in Maine. Came from Bangor by water. Hired with a captain of a schooner to come by the trip, near the end of September. I shipped to the South to chop timber at $15 a month. After I shipped I was in Titcomb's office pretty much all day. In the afternoon Crockett came in and wanted a chance in the same vessel. Mr. Titcomb told Crockett that Mr. Jackson had his complement; but did not know but what Mr. Jackson would take him and he would give him an order to go on board the vessel and see Mr. Jackson. Mr. Titcomb gave Crockett the order and asked me to go with him and show him where the vessel lay. We went down to the vessel and asked for Captain Jackson. They said he was not on board but was at No. 9 State street. He was not there. We went back to the vessel and they then said it was the wrong number, it might be No. 8. By the time we got to No. 8, State street, the office was shut. Asked Crockett to go down to Central wharf to see the vessel I came in. Crockett said he guessed he wouldn't go, and invited me to go with him. Mr. Crockett said, let us go this way. We went down to the house that was burnt. Saw two men standing by the way. Sat down by it, near the step on a piece of timber. Crockett said there was a young man in the house, named Hiram Ferguson, that he wanted to see. He went in, stayed four or five minutes. He came out, said the young man was not there. We passed the two men again. We stopped at a brick building with a bar. Crockett went in and I sat down on a chair in the entry. I stepped to the door and saw a man coming towards the house. Crockett came to the door and asked the man if it was him, calling him by name. It was Russell. They whispered together. Crockett asked Russell if he was going home. Russell said he was not going home then, but would be home as soon as he could be. Crockett said he was going then, and should meet him there. We went to Russell's house. Crockett asked Mrs. Russell to get

him some tea. Russell came in in a few minutes, got some wood for the fire and went out again. Mrs. Russell got the tea ready and Crockett invited me to take tea with him. I did not accept. Crockett ate his supper alone; after supper Crockett took from his pocket a match and lighted his cigar. Presently I heard a tapping at the window. Crockett lifted up the curtain and I saw a man standing there in a frock coat. Crockett got up, took his hat, gave me my hat and made a motion for me to follow. Mrs. Russell asked who that was that knocked and Crockett said he did not know. Crockett and I went out around one corner and Mrs. Russell went around the other corner with a light and asked again who it was. Crockett said again he did not know. On looking down the street, we saw a man in a frock coat. His frock coat was snuff color. We then all three went towards the bridge. We came to a shop and Russell asked if we would go in to see if we could get anything to drink. We got some brandy and I paid for it. I asked them where they were going. He answered, we were going over here a piece. We then went to the street where the fire was. As we were going along, Crockett mentioned there was an Engine-house. We went down to the house that was burnt. Crockett and I sat down on the stick of timber again. Russell went into the house; was gone half an hour. Believe a woman came out. Don't recollect that she threw any water or anything. While Crockett and I were sitting on the timber, we talked about people that he and I were acquainted with in Maine. He told me something about the ten hour system. He said it was the cause of all the fires. I said I did not know what they wanted to burn the buildings for. He said, to make more work. Asked him if all the buildings that had been burnt lately had been set afire. He said *no;* that the distillery that was burned was not set afire, but got a-fire by the *perfumery* of the rum. He looked over his shoulder at the house we were sitting before and said he'd touched that old thing twice, but it wouldn't go. It was the house that was burnt. I asked Crockett where that fellow had gone to, meaning Russell. Crockett said he would go and see. Went into the house and was gone about five minutes. He came out and wanted me to go in. I said I didn't want to go in with my old clothes on. He said there was nobody in the house but a woman and a girl. We went into a small room. Met three Irishmen and two or three Irish women. Never saw any of them before. One of the Irishmen sang some songs. Mr. Russell sent an Irishman for some brandy—were there from 9 to 11. One of the Irishmen got mad with Russell, and ordered him out of doors. Then Russell told him he had done nothing to injure him or offend him. Russell pacified him, got him good natured and shook hands. Don't know what the Irishman was mad about. Russell, Crockett and myself went out through the front part of the house. We crossed a little creek and passed by some frames of timber to a wood-pile. Told them I was not going to be running about there all night but would go to some

tavern and get lodgings. Crockett said I needn't be scared, as they were not going to lead me into any scrape. Russell went up to the wood-pile and hauled down a stick about the size of my arm. He held it in his hand. Crockett and Russell then went one side and whispered together. Crockett came back to me and asked me if I could keep a secret. Told him I thought I could. Crockett went back to Russell and Russell said he might tell. said he would tell me something if I'd signify I would not tell of it. He said he was going to give that house a touch, or something of that kind and wanted to know if I would tell of it. I said it's likely I shall tell of it but did not say whether I should or not. Russell came up and Crockett spoke out loud and asked me again if I'd tell of it. I told him I would not. They were speaking of the house we had come out of. Crockett said he'd go and touch it and told Russell and me to go and stand by the cooper's shop till he came back. We set down by a cart within eight or ten feet of the corner of the shop. Crockett went towards the house. Was gone ten minutes and came back within a few rods of where we were and whistled. Russell then whistled. We then went back to the wood-pile, all three of us. They laid down by the wood-pile and told me to lay down. Russell asked Crockett if he thought it would go. Crockett said he thought it would. Russell asked Crockett what there was there to set fire to. Crockett said, shavings. Russell asked how many. Crockett said two cart-loads. Before this, Russell asked Crockett where he had set the fire. Crockett said, in the cellar. This conversation was while they were lying down. Russell said he didn't believe it would go. Crockett said, wait. In a minute you will see it blaze. Both then started—went across in front of the wood-pile, till they came to a building or shed like. They told me to stand there till they came. Remained there ten or fifteen minutes and then heard a whistle. Saw Crockett coming. Crockett said I I should see it go in a minute. In a short time I saw a light that way and the fire blazed up at the house, and I heard the women and children screeching. One of the Irishmen cried fire. Crockett hunched me with his elbow. I then said to Crockett, "Where, for God's sake, shall I go?" "Go," says he; "why go to the fire." I then left him. When they first communicated their intention to me, I meant by saying to them, "It's likely, I shall tell of it," that I should tell. Said it would jug them; that it would not answer. Told them it would be a hanging matter. Crockett said they wouldn't find it out. When we separated, went up Short street and halloo'd fire and worked on Engine 20. Saw Russell at work at the engine. Worked till the fire was put out. Then inquired of a man where I could find the Mayor of the city. Went to the Engine to inquire for the Mayor. A young man said the Engine was kept within about 300 feet of the Mayor's house, but said he could not leave his engine to show me then. Next saw Mr. Rice going into his house. Told him what I wanted to make known. He said Col. Amory was the proper man for me to see. There they said Mr. Hammond was the man to in-

form. Saw Mr. Hammond. We went into a room and I told him. He said we must find the fellows. We went to the engine-house, got some more men. Told Mr. Hammond that Crockett had the matches in his waistcoat pocket, with the order for Mr. Titcomb. We did not go to the right house first. The second house we tried was right. We went in and I identified Russell and Crockett and they were both taken to jail.

Was in Boston about five years ago. Came as a cabin boy. Followed farming chiefly, but last season I worked at Milford in the saw mill. My uncle Freeman is chairman of the Selectmen.

Cross-examined. My father and mother died when I was two years old. Have lived with my uncles since. I worked in Monmouth with Captain Judkins twice. Last season I worked a month. Did not stay longer because I could not get my pay. I was sued for a hat that I took at Orono. Someone took my hat from a shelf and left another in its place in a store. The clerk advised me to take the one left. I was sued for leaving a man I agreed to live with and gave him my note. It is not paid. I got a uniform and it is not paid for yet. Was never arrested for larceny. Was once taken as a witness against a fellow I was with for house-breaking. Did not know anything about it and was not ordered to appear as witness against him. Came to Boston from Bangor in the schooner *Merchant,* with Captain Reed. Was going about the city two or three days before I was discharged. Heard Captain Reed talking about the many fires that had happened and there was something said about the Mayor's offering a reward. Have no recollection that I ever read the handbill offering a reward for the incendiaries. Never saw Crockett till I saw him at Titcomb's office. One reason I did not go away was that Russell had a large stick under his coat. He did not use the stick in any threatening attitude. Did not think it best to raise the alarm. When I said, "Where for God's sake shall I go," I was frightened. I thought I had got into a bad scrape.

John Hammond. Am Chief Engineer of the Fire Department. Arrived at the fire about ten minutes after twelve. The fire was raging considerable and several engines were there: No. 20 was there. The fire was subdued before the house was entirely burnt. When the fire was got under, Mr. Rice came to me and introduced Freeman. Said Freeman knew who set the house on fire. Heard his story and took him, Mr. Warren, Dr. Newell and Carleton, members of the Fire Department to South Boston. On the way, Freeman told me to look in Crockett's pocket for matches and also for an order. We found Russell in bed, in the lower part, and Crockett in bed upstairs. Found the matches in Crockett's vest pocket and a piece of sand paper. Found the order of Mr. Titcomb there also. Tied Crockett and ordered Russell to be tied. They were taken to jail. We took Freeman back to jail with us and he was kept there to be a witness. Crockett said he had been at the fire. Freeman rather declined going into the house till he was dressed up in a fireman's cap. He seemed afraid they

might have arms in the house and know him. About a week before the fire, Dr. Newell and myself looked at the house that was burnt. It contained from nineteen to twenty families and from one hundred to one hundred and twenty individuals. We thought it an unsafe house. It was of wood and could hardly be said to be built. It was merely lightly put together. Freeman told me the story, substantially as he did at the Police Court.

Thomas B. Warren. Am assistant engineer. Captain Hammond said to me he had a man who would tell me who set the fire. I said, that's the very thing we want to know. Captain Hammond told Freeman to make a short story of it. Disguised Freeman as a fireman. Then started ahead and told Hammond I'd go call Constable Andrews. Freeman could not tell where to find the house exactly, as he had only been there once.

Joseph Carleton. Am Foreman of No. 20. In going over to South Boston conversed with Freeman. He seemed anxious to know whether he could be harmed. Told him he was in no danger and perhaps he might get the reward. Do not remember whether he knew there had been any reward offered or not. He said he did not expect or wish any reward. That he had told because he thought it was his duty.

William Andrews. Am a Constable and made the arrest. Found Crockett in an upper room. He was sleeping on a straw bed on the floor. His coat was wet and his pantaloons more so. He said he had been at the fire. So did Russell. Crockett acted, as I have known people act, when they have pretended to be asleep, when I have been after them.

Stephen H. Titcomb. Saw Freeman and Crockett in my father's office. Freeman had shipped and Crockett wanted to ship. The crew was completed but my father gave him a reference to the owner of the vessel.

William Donahue. Boarded in the house. About ten minutes before nine I went out. Saw three men in part of the building. Looked to see what they were doing. Went to see the engine company fill the cistern. When I came back I saw only two men. They were sitting on a log. Told my brother that I didn't like the appearance of the three men, and that they had better not go out for fear of difficulty.

THE DEFENSE

Mr. Winthrop opened in behalf of the prisoner, and called the witnesses for the defense.

Ezekiel A. Coleman. Boarded at Mr. Rider's. After twelve o'clock was standing on the steps of our house. An Irish woman came up making a noise. Did not know what she meant. She kicked against an Irish hut right opposite. Mr. Smith and I went over to see what was the matter. We did not know but some murder might have been committed down in the big building. We found out it was fire she was talking about. Went down to

the new house where she said it was. It was in the cellar. It was then as big as a peck measure. The shavings were nearly all consumed and the fire had commenced running up the partition. Went into the house. Asked one man for a bucket. Saw some people. They had got the alarm at the time. At the first right hand room at the further door, saw a man drunk. I helped out two that were so drunk that they could not have got out without help. The fire was directly under the room where we found the man drunk. I heard no one halloo fire but the woman. I belong to No. 20, and was one of the three men that helped draw her out of the house.

Jonathan Judkins, Henry A. Norris, Samuel B. Marston, Franklin O. Welsh, Emery Welsh and *George Carpenter* testified that they were acquainted with Freeman and that his general character was not to be depended on for truth and veracity; that he was idle and indolent; that he used to take too much liquor; that he was a simple inoffensive man and rather cowardly.

WITNESSES FOR THE COMMONWEALTH AGAIN

Flavel Case. Am Captain of the City Watch—

Mr. Winthrop. We object to this witness because he has been sitting in the court during the examination of some of the preceding witnesses contrary to the order of the Court excluding all witnesses except the one under examination.

SHAW, C. J. The objection is overruled. Captain Case was not present during the examination of any witness who testified upon the point he is to be interrogated upon.

Flavel Case. Went to the jail to see Russell as I heard he had formerly been of the City Watch. Saw Crockett. He said he was at the wood pile a few minutes before the fire with Russell and Freeman. Did not see the fire and knew nothing about it.

THE VERDICT AND SENTENCE

December 17.

The arguments of the respective counsel began in the morning.

The CHIEF JUSTICE in his charge confined himself to the law in the case telling them that "the whole contest or struggle was whether Freeman were or were not entitled to belief."

The jury retired and returned in two hours with a verdict of GUILTY.

CHIEF JUSTICE SHAW sentenced the prisoner to be hanged on Wednesday, March 16th, 1836.

THE EXECUTION

Pursuant to their sentence, and in accordance with the settled conviction in the minds of the community of the necessity of their execution, Russell and Crockett expiated their crimes on the scaffold in the Boston jail yard, at a quarter past ten on the morning of Wednesday, March 16.

A little after eight, the Rev. Mr. Taylor, of the Bethel, accompanied by a few religious friends, entered the jail, and for the convenience of their exercises, both prisoners were placed in one cell, though each manifested a disinclination to meet the other. After the religious services were concluded, however, the question being put to them, they both declared that they did not cherish any feelings of resentment towards each other. But Crockett, ever since his conviction, had expressed himself with evident hostility towards Russell, whom he accused of having ensnared him into a course of crime, which has proved fatal to both.

Sheriff Sumner read their death warrant to them in the cell, from which they were immediately conducted to the scaffold. As soon as they reached the platform, they were at once pinioned and their final position adjusted. Russell's countenance and tremulous limbs indicated intense terror, while Crockett displayed more composure and firmness. They both employed this brief space in prayer; and occasionally the words "Save me! Save me!" in deep tones could be heard proceeding from Crockett after his cap was drawn over his face. Just before the Sheriff went to the cell he had made a fervent prayer, in which he implored the Divine Blessing upon himself, his brother in crime, his parents, and his wife and children, and in answer to Mr. Taylor's question if they had any complaint to make against the decision of the jury in their case or against the Governor and Council for not pardoning them, they replied they had not, "the verdict was just; their own crime had brought them there and they fully deserved execution." Crockett had also the night before

delivered to Mr. Taylor a confession written by him in his cell in his own hand.[11]

All the preparations being completed, the Sheriff held up the Death Warrant, saying: "I hold in my hand a warrant

[11] CROCKETT'S CONFESSION

"Boston Jail, March 15, 1836.

I now under a deep sense of my situation, wright a few lines to leave on earth, after I leave the world in memory of me, while my spiret is gone into the world of spirets. I feel to give glory to God, that he is able and willing to save all that will come to him, and is not willing that any should perish, but all should come to the knowledge of the truth and be saved. As I have not left any wrighting for anyone I now leave a little in the hands of Mr. Taylor, and for him to dew as he sees fit with it. I would leave a few lines to show how I came to be in this situation. As for myself I never was a villain, nor given to roagary. It was never my calculation to lye, or cheat, for a living, nor steal, but calculated to get it onestly by labor and it would proved so to this day if I had not fel into cumpany with Stephen Rusel, which I dew aferm to be trew. He has led me in. To this state of misfortune and on the brink of my grave I feel to bles God that I never was a theaf, nor a robber, nor a murderer, nor among bad women, and my mind has always been far from it, and they would not caut me in this scrape if tha had not caut me *intoxicated,* and I did not know what I was about nor where they was a getting me to. I have had many heavey reflections since my trial to think that I had not pled guilty and let Freman loose his part with us, but I was in hope to split his evedence, and by that means I pleaded not guilty. So now I see the effect of falling into *bad company.* I feel to *warn all my Young Friends* to keep out of sutch company and never to drink ane Ardent Spirets. I consider it the worst weapon a man can use to take his life with, and make him eternally miserable. I feel to warn you, as a dying friend, in the name of God to abstain from drinking, for one bad man spoils a hundred, for when rum is in, wit is out, and the devil is allways reddy to help to dew mischief, and lead a man into trouble and then leave him to get out if he can, but remember you have got to pas threw the course of law to get out, and when you are inclosed with walls of Stone, you will then begin to reflect uppon your past life, and wish you had red your little bibel and gone to meeting on the Sabath, and evenings been at home with your wives, or at your boarding houses, a readin your bibel and other good books, and not give your wives the privilege of getting permission of the Gail keeper to let them come and look threw the little trap door and weap over you and return home with broken hearts and say, *rum and brandy* put our husbands in jail. No wonder so many Crimes are Comited with the drunkard when his brains is boiled in *gin, rum and brandy,* when the natural man has fled and rum and brandy has changed a man to a beast and destroys the finest works of nature.

from the Government of Massachusetts, commanding me to inflict the pains of death upon Simeon L. Crockett and Stephen Russell, and accordingly I am now going to discharge my duty." The drop then fell.

How often it is the case that you see a man on Saturday night stagering home with a bottle alkahol in his hand to last over Sabbath, and again you see the wife of a man welcoming the bottle of rum and tha must have a snap at it the first, and children must take a part with them, and after a few fashenable drams all natural affection for each other is gone, and all human nature drowned, and business up, and the children bewildered and ruff handled by those parents, and brout up as brutes and live and dy as brutes. Who can expect bois and girls brout up in this manner will make good men and women or even be capable of bringing up a familey, that must think that are raseing up subjects for eternal misere, and a grate condemnation to themselves. It would be much better if tha had never ben born and it is a truth that the *females* use ardent spirets as mutch as men according to thare privilege and dround thare delacesse, and then tha will quick form a bad character, and that as lo as the dust tha stand uppon, and then a bad house is the delight of a drunken man. Mene a promising youth has been led into sutch houses and ruined forever, and all the caus of this is by the use of *ardent spiret,* the intoxication of licker. The RETAILERS are no more *Guiltless* than the men that drinks it. I feel to render the most tender and piteful feelings towards sutch people. My hart pains me when I think on them and to think how miserable tha are before a raign trying, and hart searching God, whose fulness fils the uneverse, his presence is everywere, and can not be deceived by man. How mutch better it would be if tha would read their little bibel and attend to their soul's salvation, and be seen bowing around the famely altar, and those females around them, commending there soul to that God who gave it to them, remembering that they hav a soul that must exist somewhere forever in heaven, or hel.

Ritten by my owne hand the evening before execution. I have not given any wrighten to eneone before this, and if there is any thing separate from this it is conterfit. Fare well vain world. Simeon L. Crockett.

THE TRIAL OF JOHN C. COLT FOR THE MURDER OF SAMUEL ADAMS, NEW YORK CITY, 1842

THE NARRATIVE

One morning in September 1841, an expressman appeared at the foot of Maiden Lane, New York, with a large box to be shipped to New Orleans on a vessel lying near by. A few minutes later a gentleman arrived and made arrangements for its transportation. The vessel was to sail in a few hours, but it was delayed for a week, and the day before it left one of the crew reported to the captain that a great stench was coming from the hold. The odor was traced to the box which was brought on deck and opened and found to contain a decomposed human body. Some days before this discovery the city press had been making inquiries as to the mysterious disappearance of Samuel Adams, a well-known printer, and the body was at once identified as his, and it was ascertained that he was last seen going into the apartments of John C. Colt, who occupied rooms in the same building as Adams on the corner of Chambers street and Broadway. The expressman identified Colt as the person who had given him the trunk to take to the wharf and other tenants of the building testified to hearing strange noises in Adam's room the day of his disappearance. John C. Colt was the author of works upon bookkeeping and a teacher of penmanship and bookkeeping. He was a brother of Colonel Samuel Colt,[1] the inventor of the revolver and of Judge Colt of St. Louis. He had had business relations with Adams who had

[1] COLT, Samuel (1814-1862). Born in Hartford, Connecticut. A sailor before the mast in his youth. Studied chemistry. Invented and patented the revolving pistol (1835), and became very wealthy. Was the first to devise and lay a submarine electric cable. Another brother, James B. Colt, was a lawyer in St. Louis, was for a time a Judge and presided at the trial of Childs. See post, Vol. II, American State Trials.

printed some of his books and there was a dispute between them and some hard feeling on account of a claim made against Colt by Adams which the former thought excessive. Colt on being arrested made a confession which he repeated at the trial and which may be summarized thus: "Adams called at my office at 4 P. M., Friday, September 17, and we had a heated argument regarding the exact amount of a trivial sum of money I owed him. The 'lie' was passed and we came to blows. We then grappled and as he was overpowering me, I reached for a hammer, which was on my desk, and I struck him over the head until he released his hold and fell unconscious. He expired shortly afterward. Blood flowed in torrents from the wounds and after washing it up, I decided to notify the authorities. But when I thought of the public censure and the disgrace I would bring upon my esteemed relatives, I concluded to hide my crime by disposing of the body. My first idea was to consume it by burning the building but when I recalled that many innocent persons slept there who might be burned to death, I abandoned that plan. I then definitely decided to ship the body to some other city on the day following."

The relatives of the prisoner were wealthy, and the ablest legal talent was employed. But the jury believing that Colt committed the murder wilfully, and not crediting the plea of self-defence which he set up, convicted him, and he was sentenced to be hanged on November 14th, 1842, after an appeal which was ineffectual.

For some time before the commission of this crime, Colt lived with a beautiful young woman named Caroline Henshaw, and she remained loyal to him to the end. As she and Colt both expressed the wish that they be made man and wife, arrangements were made for the marriage, which occurred a few hours before the time set for the execution. The witnesses to the ceremony were Colt's brother, and John Howard Payne, the author of "Home, Sweet Home." After the ceremony was performed, Colt asked for and was granted permission to remain alone for a short time.

As the hour for the execution was drawing near, the excitement about the Tombs became intense. Shortly before the dread moment, a fire broke out in the prison and for the time being the execution was forgotten, as it appeared that the prison was doomed. But the firemen soon got the fire under control and the authorities proceeded with all haste to prepare for the execution. A clergyman went to Colt's cell to console him, but found Colt lying dead upon his bed with a dagger in his heart.

There were rumors for a long time afterward that the fire was set by Colt's friends in order to spirit him from the jail during the confusion and that he had actually escaped, leaving the dead body of another person in his place; but they had little foundation and have been proved to be false.

THE TRIAL[2]

In the Court of Oyer and Terminer, New York City, 1842,

HON. WILLIAM KENT,[3] *Judge.*

January 21.

After two days spent in procuring a jury the trial began to-day, the indictment setting forth that John C. Colt on the

[2] *Bibliography.* * "Remarkable Trials of All Countries, particularly of the United States, Great Britain, Ireland and France; with Notes and Speeches of Counsel, containing thrilling narratives of fact from the court room also historical reminiscences of wonderful events. Compiled by Thomas Dunphy, of the New York Bar, and Thomas J. Cummins, of the New York Press. New York, 1878." The most of the trials in this collection are foreign—only two are American, but these two are fully and excellent reported, viz., the Trial of Colt for the Murder of Adams and the Trial of Robinson for the Murder of Helen Jewett. See post, Vol. II.

While Colt was in prison a life of him was published in Boston. * "An authentic life of John C. Colt now imprisoned for killing Samuel Adams in New York. Printed and Published by N. Dickinson, Boston 1842." The book shows him to have been a rolling stone. Born in Hartford, Conn., in 1810 the son of a merchant of distinction, at fourteen he was placed in a store, but soon at his own request he was sent back to school. He ran away from school to

[3] KENT, William (1802-1861). Born in New York City. Son of James Kent, the jurist and author of Kent's Commentaries. Grad-

17th day of September, 1841, "instigated by the devil, etc., made an assault with a hatchet on the person of Samuel Adams and inflicted a wound on the right side of his head of which wound the said Samuel Adams then and there died."

Mr. Whiting, District Attorney, and *Mr. Smith,* Assistant District Attorney for the People.

Mr. Selden,[4] *Mr. Emmett*[5] and *John A. Morrill* for the Prisoner.

Mr. Smith. This is the first time I have been engaged on the part of the People in a case affecting life and death. It is a painful task for me, for you, and for all here present to perform, but it is a necessary one. You have been selected out of a large number because you have declared you have no bias. Your sympathies must not be improperly exercised. You may feel them, but the jury box is not the place for their display. The prisoner is charged with murder—a murder unparalleled in the annals of crime. You will hear the evidence and it is for you to give it the weight you think it is entitled to. The counsel for the prisoner will no doubt endeavor to palliate the crime, but the violent character of the prisoner and the contrary one of the deceased which will be shown in the trial, leave but little doubt that the murder was wilful and premeditated.

Baltimore where he taught mathematics for a while in a girls' academy; then he became a surveyor; enlisted in the navy; soon got tired of this and was released at his father's request. Then he was placed in a lawyer's office in New York—that of Dudley Selden who later was to defend him on his trial for murder. After one year he entered the University of Vermont, from there went west, engaged in land speculations; lectured on chemistry in New Orleans and began teaching book-keeping there; went to Cincinnati where he published his book on book-keeping and finally to New York City where he engaged in the same business.

uated from Union College in 1820. Judge of Circuit Court of New York City, 1841-1846. Royal Professor of law at Harvard, 1847. Founded Law School New York University, 1838.

[4] SELDEN, Dudley. Prominent member of New York City Bar. Representative in Congress, 1833-1835. Died in Paris, France, 1855.

[5] See ante p. 63.

WITNESSES FOR THE PEOPLE

Asa H. Wheeler. Am a teacher of writing and book-keeping on the second floor, corner of Chambers street and Broadway. Am a married man and reside in 30th street. Became acquainted with prisoner in 1838, when he came to show me a system of book-keeping. On 2d August last I occupied two rooms and prisoner requested me to let one for six weeks. I did so. The rooms adjoin each other and the entrance was on Chambers street. Colt's room was the second door. The door swung in. My room was at the corner and there were folding doors between that and the one occupied by Colt. The room had one window in it on Chambers street. Have seen in the room a few chairs, a table, a box and a trunk. I frequently met prisoner in the hall and went into each other's rooms. Some words had occurred between us, owing to my asking Mr. Colt for my rent. He settled by giving me some books and we were on good terms again. Was anxious to get the room in my possession. He requested to stay a week longer, which I agreed to. On Friday, 17th September, I arrived at my room about half past 2, when a pupil of mine about 16 years of age, named Seignette, came in. About a quarter past 3, I heard a noise like the clashing of foils and a violent fall on the floor. The young man exclaimed, "What is that?" I said I did not know. Went into the hall and listened at Mr. Colt's door but all was still. Looked into the keyhole but found that the drop was down inside. I took my pen, placed it in the keyhole and slid the drop on one side. There saw in the center of the room, close by the wall on the west side a person in his shirt sleeves, in a position as if bending down over something. On a table were two black hats. The person remained in the recumbent position about ten minutes. He put something on the table which I did not see, and returned to the same position. Called the young man to stand in my door and watch Mr. Colt's door till I went up stairs to find the owner of the building and procure advice or help. He was not in. I then called at several of the doors but the occupants were not there, it being the hour for dinner. Called the keeper of the house, Mr. Locklan, who with myself, endeavored to look through the keyhole, but found the slide down and the room darkened again. I rapped again but no answer. Sent one of the scholars, Mr. Delnous, after an officer, who returned and said that the officers were then engaged, but one of them would be there in half an hour. Two of the scholars, Mr. Wood and Mr. Riley, went again after an officer. We continued to watch the door. The officers sent word back that they would not dare to open the door, but we must keep watch. I remained in my room till 9 o'clock, and left it in the care of Mr. Delnous, who was to remain. At nine o'clock I left with Mr. Delnous. At half-past nine next morning I borrowed a key and went into Mr. Colt's room. He was absent. I only stepped one foot in and looked round. I discovered that the box was missing that had stood there, and that

the floor had been scrubbed. The part where I supposed I saw the person the day previous was more scrubbed than the rest. Oil and ink had been spilt round the base of the floor, and thrown in spots on the wall. I closed the door and went into my room. The scrubbing had been more in the center of the room and was not quite dry. Locked the door again and returned the key to the owner. After being in my room about 30 minutes Colt rapped at my door. He inquired if my key would fit his door, as he had left his at his house, and wished to enter his room. I told him I did not know, but he might try. He did so, but it did not fit. He commenced talking about book-keeping and writing in which we were both engaged. He was very talkative. I observed, "Mr. Colt, what noise was that in your room yesterday afternoon?" He replied, "You must be mistaken, as I was out all the afternoon." I said there certainly was noise, as it had quite alarmed us. He said nothing more and went away. On Sunday did not go to the office, and did not see him. On Monday morning went to the office and was leaning against the folding door, when Mr. Colt entered his room. He commenced singing, which was very uncommon. He was smoking and had a bunch of matches in his chair. He asked me to smoke with him which I declined. He observed he had a very bad habit of smoking, doing so to a very great extent. He either said it caused him to spit blood, or he did it to prevent spitting blood, cannot say which. There were 30 or 40 specks on the wall. In the course of conversation I referred again to the noise. He said, "to tell you the truth, Mr. Wheeler, I upset my table, spilt my ink, and knocked down the books, making a deuced muss. I hope it didn't disturb you." On Saturday I called at the office of the owner of the building, over my room to ask his advice. He said it was a very delicate subject to meddle with, and we had better wait until we saw something in the papers. Colt and I met frequently in the hall during the week. On Tuesday I saw the notice of Mr. Adams' absence in the papers, and went to the house of Mr. Lane, but couldn't see him. Mr. Lane called on me at my room in company with Mr. Loud. He brought with him Mr. Adams' books. We examined them. We then went to the Mayor and informed him of what we knew. Continued to meet Mr. Colt in the hall up to the time of his arrest. On Thursday he urged me very politely to come into his room, as he wished to have some conversation on the subject of book-keeping, and obtain my advice as to the publishing of his work. Promised to go in, but did not. On Friday morning he invited me in again in a very friendly and pleasant manner to come into his room. Colt was arrested on Friday.

Arsac Seignette. Am sixteen years of age. Was at Mr. Wheeler's between half past two and three, at a desk facing Broadway, nearly opposite the folding door. Heard noise as if you laid hold of a man and threw him down without much trouble. Rose from my seat at about the same time with Mr. Wheeler and I followed him. He looked through the keyhole and returned. He then went up stairs

while I kept watch at Colt's door. He returned with Oakland. Tried to look through the keyhole, but it was stopped up. He went out, returned again and went to the door a second time. Two persons came in who were strangers to me—one of them was an Irishman—then Mr. Wood came in, and then Mr. Delnous. No person had gone into Colt's door, nor did I hear any voice in the room. Had not seen Mr. Colt that day and did not know him.

To *Mr. Selden.* It was the first day of my becoming a scholar. Heard the sound like striking of foils on crossing each other. The fall followed immediately. Do not think it was foils, but cannot compare it to anything else. After trying to look through the keyhole, listened at the folding doors, and thought I heard a noise as of struggling or something like that.

John Delnous. Am twenty-six years old and a bookkeeper. Had told Mr. Wheeler I would take the room occupied by Mr. Colt when he vacated it, which he agreed to. Went to Wheeler's that afternoon. Saw him go to the keyhole. Listened at the folding door, but heard no noise whatever—everything being perfectly quiet. Mr. Wheeler asked me to go for an officer, which I did. Mr. Wheeler left about nine. I remained for about half an hour. Heard some one unlock Mr. Colt's door from the inside, come out, lock it again, and go away. The person returned in about five minutes. I heard some one in Mr. Colt's room tearing something resembling cotton cloth. The next sound was the rattling of water —after that, some person scrubbing the floor very near the folding door, continually putting his cloth in the water and rinsing it. About six o'clock next morning heard some person nailing a box. The noise awakened me. Heard a person sawing a board. Was gone to breakfast about an hour. On coming in, saw a box at the foot of the stairs, directed to some person in St. Louis, *via* New Orleans. There was no box in the entry when I went to breakfast. Had seen Mr. Colt two or three times—once in his room, when I went to ask him about the key in the folding door. He said it was in the door, and pointed it out. Saw him the Friday after the murder, when he entered into conversation. The box was removed the same afternoon that I saw it in the entry.

To *Mr. Selden.* Was not absent from Mr. Wheeler's after going there in the afternoon, except when I went to the police office, and when I went to tea. Returned from tea about half-past seven. The weather was rainy. The keyhole of the folding door is above the desk. It was stopped up. After my return from tea, Mr. Wheeler knocked again at Colt's door, but there was no answer.

Law Octon. Am keeper of the building corner Chambers street and Broadway. Know the prisoner, but had little acquaintance with the tenants. On the afternoon went with Mr. Wheeler to Colt's room. He applied his eye to the keyhole. Everything was quiet. In about an hour Mr. Wheeler went again to Colt's door. Next morning saw a box in the hall at the head of the first flight of stairs. Colt came out of his room, laid hold of the box, and took it down stairs.

He threw it over on its side, dragged it to the stairs and slid it down, going before it, and placing his shoulder against the box to prevent it going too fast. Saw the words "New Orleans" on it. The direction seemed to be done with blue ink. Colt did not say anything when he was getting the box down stairs. Never saw the box before and have not seen it since.

Richard Barstow. Am a carman. Saw Mr. Colt in Chambers street near Church, the morning of the 18th September, about nine o'clock. Asked me if I was engaged. Said he wanted a box to be taken to the foot of Maiden Lane. I agreed to take it. There was a spring cart opposite to the door, standing sideways with the head towards Broadway. Backed my horse up to it. He went in and I followed. The box lay alongside of the balusters. The carman that was there with the spring cart took hold of the box with me, and we took it up and put it on my cart. Colt stood by. Went back and asked him to what vessel I was to carry it. Said he did not know, but it was at the foot of Maiden Lane and he would go with me. Had noticed the direction and supposed the box was going to New Orleans. Stopped opposite a ship bound for there and pointed to the vessel to know if that was the one and he nodded assent. The vessel was the *Kalamazoo.* The weather was rainy and the box very dirty and had to be cleaned before it was put down below. Dropped the box on the wharf the same as I would a box of sugar. Colt handed me two and sixpence. I took it and cleared out. A week afterwards saw the same box again in the hold of the *Kalamazoo.* It was opened and contained a dead body. The box was then closed and carried to the dead house.

Thomas Russel. Am a carman. On the 18th September saw the other carman come to the door of the granite building and assisted him to put a box on his cart. Mr. Colt was there. Did not know the carman that took it. On the 25th was asked by the officers if I knew him. Replied that I did not, but thought I would know the horse. Went and found him. Went down to the ship *Kalamazoo* together. The box was hoisted to the middle deck. Saw it opened. First saw the awning, but on account of the stench I left and did not see the body.

Mr. Godfrey. Am superintendent of carts. The Mayor asked me if I could find out the cart spoken of. Found the carman at Peck Slip. Asked him if he recollected about it. He replied that he did. Went on board the *Kalamazoo* and saw the chief mate. Got an order to take out the cargo. On Sunday morning with a lot of stevedores we commenced taking out the cargo. When near the box Barstow recognized it. We hoisted it up, knocked off the lid and took out the awning, when we discovered a dead body. There was a rope round his neck and passed down round his legs and his knees drawn down towards his head—his face was up. Examined it and supposed there was salt on the breast and body. The body was not taken out on board the ship. The chief mate threw some chloride of lime over it, and the box was nailed up again. Put it on the cart and carried it to the dead

house, opened it there and saw the dead body again. The box was directed to R. P. Gross, St. Louis, to the care of Mr. Gray, New Orleans. The salt on the body was partially dissolved. The body had a shirt on. Had a greenish cast to it, as usual, when the flesh became mortified. Oceans of people have offered to bet me that Colt would be cleared. One last week and two this week. Mr. Kelpin is one. Probably a thousand persons offered to bet, but I told them I had nothing to do with it. Cannot say whether the people have been sent to me or otherwise.

Abner Milligan. Am deputy Coroner. Saw about two quarts of common salt in the box, also a black dress coat which had been cut or torn, also a stock which had been cut, and was smeared with blood on both sides, part of an awning, two pieces of matting about eighteen inches square, and some oakum. The coat and stock were underneath the body, the others with the body, folded in. The body had nothing on it but a shirt. The neck was drawn down to the knees by a rope.

To *Mr. Selden.* The body was examined by Drs. Gilman and Kissam. There was a small ring on the left hand, which the coroner took off. The coat appeared to have been a new one, but it was much cut and torn. About a pound of chloride of lime was thrown into the box. The cleaning of the body took place in the presence of several individuals, from the beginning to the end of it. The whole of the box has been preserved. The stock was cut in two in front, the buckle remaining fast. Saw no wound except that on the head.

Robert H. Morris. Am Mayor of New York. Was applied to on Thursday, the twenty-third. Went over to the building and examined several persons, among them the keeper. Associated Justice Taylor with me, who, on Friday morning, took depositions, and issued a warrant against Mr. Colt. Justice Taylor, A. M. C. Smith, another officer and myself went to the building to arrest Mr. Colt. His door was locked, and a label left on it that he would be back soon. Mr. Colt came to his door. I told him who I was and that I wished to see him in his room. We all went in and closed the door. I told him that he was arrested on suspicion of having killed Mr. Adams. The officers proceeded to search him. Prisoner assisted in the search and seemed disposed to yield everything. Sent an advertisement to the papers, asking any carman who had carried such a box from the building to the ship, to give notice at my office and succeeded in finding him. Went to the Coroner's office, and learned particulars as to the marks and on Sunday morning we got the box out.

To *Mr. Selden.* Did not hear anything about the salt in the box till after the coroner's inquest. The two things were started simultaneously, to find the box and to find Mr. Colt's residence. Justice Taylor took charge of one branch and I the other. Colt's residence was ascertained on Saturday. We moved with as much secrecy as possible, in order to prevent a knowledge of these proceedings coming to the parties.

Thomas Taylor. Am a police magistrate. Went with the Mayor to Mr. Colt's room, who was absent. He soon came and was arrested. Dr. Chilton endeavored to ascertain the character of the spots on the wall. Samuel Colt came to the Mayor's office on Saturday morning and told me the residence of his brother. Went to 42 Thomas street, and inquired for Mrs. Colt, and was introduced to a young woman who was called such. Asked her what apartments Mr. Colt occupied, and where his trunk was. She drew from a recess in a room in the third story the trunk that is now in court. It was opened in his presence in the police office; found some things in it, among them a book, with several names in it. Also some stamps, with "Colt's Book-Keeping" on them; also cards for his lectures. There was also a watch.

To *Mr. Selden.* The spots on the wall were larger near the center opposite the folding doors than anywhere else. Was present when the box was opened on board the ship, but did not observe anything like salt about it. Found at Monroe street, besides the trunk, a carpet bag, which is here. Everything is in it now, except a piece of newspaper, which I gave to Mr. Clinton. The shirt here shown was also found at the house. It is marked "J. C. Colt, No. 5." Both of the wristbands were off. The shirt was neither in the carpet bag nor the trunk. Got the key from the female and wished her to open the trunk, but she declined, when we took her to the police office and opened it in presence of her and Mr. Colt.

Mayor Morris (recalled). After Mr. Colt's room was locked up, the key was brought to me and I took from the room such articles as I thought would be necessary on the trial. There are some pieces of cloth, pieces of towel, and pieces of a shirt, which were taken from a trunk in Mr. Colt's room; also pieces of a handkerchief and a pamphlet; also four stamps of Colt's book-keeping, a ball of twine, papers, some letters, a receipt, two pocket books.

To *Mr. Selden.* Mr. Colt was in custody at the time. I put padlocks on both of the doors. In one of the pocket books was a paper, endorsed, "Hair of Sarah Colt, my mother; Margaret Colt, and Mary Colt, deceased." There was also a package containing documents endorsed, "My little old aunt," different numbers; also some two or three letters from some individuals, a discharge for John C. Colt from the marine service. There were a great many other articles found in the room, several papers and books; also a new hatchet—found no rope in the room.

David Kelso. Am a pilot. Became acquainted with Colt in May last. He came to board with my sister-in-law, with a lady, whom he called Mrs. Colt. They messed with the family and occupied a front room in the third story. They had two black trunks and a leather bag. Have often seen the trunk in the entry.

Dr. Chilton. Am a practicing physician. Was called to the room of Mr. Colt, corner of Broadway and Chamber streets. Saw spots on the wall. Preserved them for examination. An immense number of spots on the folding doors. Also took the hatchet, which was placed in my

charge; also a piece of the floor, having a stain on it. Applied the test and the spots proved to have been blood. Blood was on the hammer side of the hatchet, which had been inked over, as also on the handle, near the eye of the hatchet, which had been inked. The spot on the piece of floor proved to be blood. Oil had been thrown round the base of the floor, under which was blood. There was also a piece of newspaper, which had much stains upon it. It was opened, and showed much blood on it, and was also much torn. It was part of the New York *Herald* of June 13, 1841.

Mercy Octon. Am wife of Law Octon. Knew the prisoner well. Was in the room he occupied after Mr. Wheeler received the key back, and cleaned out the room. Mr. Colt asked me on the sixteenth of September to lend him a saw. Did not say what he wanted of it. I lent him the saw; took it to his room.

Dr. Gilman. Am a practicing physician. Examined the body of Mr. Adams on a Sunday in company with Dr. Kissam. It was tied with a rope around the knees and carried to the head. The thighs were strongly bent up, and the head a little bent forward. The body was excessively offensive, and covered with vermin. The skull was fractured in several different places. The right side of the forehead, the socket of the eye and a part of the cheek bone were broken in. The brow had escaped, but above that the forehead was beaten in. The two fractures communicated on the center of the forehead, so that the whole of the forehead was beaten in, also the right eye, and a part of the right cheek. On the other side of the head, directly above the ear, there was a fracture, with depression of the bone—it was not detached, it was dented in. This fracture was quite small. There was also a fracture on the left side of the head, a little behind and above the ear, in which there was a round, clean hole, so that you might put your finger through it. There was no fracture on the back part of the head. The head was so much decayed that the scalp could be removed from the bone by a rub of the finger. One of the legs, I think the left one, showed a dark mark near the instep, but whether from an old sore or a blow I could not tell. There was a gold ring on one of the fingers, which we took off. The body was that of rather a stout but not a fat man. The blows on the head could readily have been made by the hatchet produced, except the round hole. Am at a loss to see how it could have been made by it, but it might have been. Do not think the sound in giving such blows would resemble the clashing of foils. There must at least have been five blows given. If a ball had been fired from an air gun, it might have made such a hole as that in the head, and a person receiving it would be instantaneously killed, and unable to make any noise. Did not find any ball in the skull. A single blow from a hatchet, sufficiently strong to drive in the skull, as we found it, would prevent a person from crying out. The person would not probably bleed much. There would be more blood from such a blow than from a pistol ball.

To *Mr. Selden.* The wounds on the right side of the face and

the skull must have been made by more than one blow, unless struck by the head of a large axe. The wounds were probably done by a blunt instrument (the hatchet shown has a hammer on one side). The blow on the back part of the skull may have been done by a sharp instrument or by a blunt one. Cannot reconcile the idea of a hole in the head being made by the hatchet; a large nail being driven into the skull would leave such an appearance. Heard observation there about salt, but saw nothing of it. Admitted to mention on direct examination another wound. It was a fracture of the lower jaw on the right side, about an inch from the center of the chin. Blood would cease to flow after life was extinct. The hole was round, with slightly ragged edges, and similar to what would have been made by a ball.

Dr. Kissam. Heard the examination of Dr. Gilman and agree with him. Saw and examined the body before it was washed and saw nothing that looked like salt. Chloride of lime had been thrown on the box. Think the wounds, other than the hole, could have been made with the hatchet.

To *Mr. Whiting.* The blow on the right side would have struck a man down and instantly caused death. The wound on the left side might have been produced by a very heavy fall. Cannot say how the hole was made. It was a circular hole, with broken edges. It is possible the wound was made with the hatchet.

Dr. Archer. Am a Coroner and examined the body. Took a ring from the finger of deceased. Think it unlikely that a blow from the hatchet would have made the hole in the head.

Emeline B. Adams. My husband's name was Samuel Adams. At the time of his death, he was about thirty years and a printer by profession. He was last at home on the 17th of September, at noon, to dinner. Do not know where he intended to go when he left home. He did not return. An advertisement was put in the paper on Wednesday. He wore a black coat when he left home, vest, gambroon pantaloons, a cotton shirt and black stock, and had a ring on the small finger of one of his hands. Did not see the body at the dead house. The ring was shown to me by the coroner (ring handed to witness); this is the same. The coat shown to me was his. Think it doubtful if I should know the shirt again if I saw it. The stock shown was his. Know the stock, for I made it myself. He had a watch, with a gold chain, key and seal. The watch and key shown are the same. The key I wore two years myself. Am positive he had the watch with him when he left home.

John Smith. Am a printer and foreman to Mr. Adams. Knew Mr. Colt. We published a system of book-keeping for him. Mr. Adams left the office on the 17th September, about 2 o'clock. He did not say anything at the time of leaving and do not know what way he went. Had on a black coat, black stock and gambroon pantaloons. He did not return. On Tuesday I wrote an advertisement. Saw Mr. Colt in Mr. Adams' office about a week before the time of the latter being missed. There was a book printing for him then.

It had been finished. Saw Colt also on the day after the advertisement was issued. He called at the office between ten and eleven o'clock and enquired for me. He came suddenly upon me and asked if Mr. Adams was in. He said he had seen the advertisement in the newspaper. I told him he had been missing since the previous Tuesday, and that if I had known where to find his office I would have called to enquire of him. He replied that he had known Mr. Adams for about three years, and had always found him very kind and accommodating. Told Mr. Colt that some of the sheets of his work remained in the office, and he asked me to take care of them. He spoke of some work that Mr. Adams had formerly done for him, and I referred him to Mr. Wells, a book-binder. I asked him if he did not owe Mr. Adams about two hundred dollars, he replied he owed him about fifty dollars. Did not see him again previous to his arrest.

David Downs. Was acquainted with Samuel Adams, and had been intimate with him for five years. Saw the body in the dead house and believed it to have been his. Knew it by the foot, hair and size of the person. Am a boot and shoemaker and acquainted with the size of his foot. Considered him to be a man who was reserved and of very good temper.

Charles Wells. Am engaged in the book business. Was acquainted with Mr. Samuel Adams for five or six years. We were often at each other's places. His general temper I supposed to be good, but never saw him under circumstances by which it would be tried. Saw him on the seventeenth of September at two o'clock. Had proposed that he should print a book for me, and take the pay in binding. He informed me soon afterwards that he was doing some printing for Mr. Colt and asked me to bind that. The sheets were sent to the place where I have folding done. Mr. Colt came in and said he had been in the bindery and wished the books forwarded to Philadelphia. Sent for Mr. Adams to get his directions. Told him that Mr. Colt had ordered the books to be sent to Philadelphia, and asked if it was all right. He answered, "Yes, I believe it is all right. I am to get the proceeds." Said there must be some misunderstanding between them. He turned round and said he would go and see. He left my place after two o'clock and I have not seen him since.

To *Mr. Selden.* Told Mr. Adams that Colt expected the proceeds. Thought it was my duty to tell him. He only said, "I will go and see." He did not show temper but seemed surprised that there could have been a misunderstanding. He was a man of very few words. Do not recollect saying that Mr. Adams was vexed when he left my store. Hardly dared to say anything about it for the first five or six days, there was so much confusion. Mr. Colt had said Mr. Adams was very kind to him and had bought him paper for his works. Mr. Colt appeared to be worried and anxious to get them off, so much so that I thought he intended to run away. The plates cost at least three hundred dollars. I believe they are now in my vault. Do not know who put them there. Thought

from the tenor of Colt's remarks that he supposed the delay was caused by me. He said if they could be got out any sooner by paying the cash at once, it should be done. I replied that the binding had been hurried as much as possible.

To *Mr. Whiting.* He did appear to be vexed, the day subsequent. Mr. Colt came into my room and said, this is very strange, what could have become of him. I did not look up, but he came and put his hand on my desk. I said "I do not know; the last I saw of him he said he was going to see you." He did not appear to make much answer, but stepped back. We then began to talk about the books.

John L. Blake. Am a clergyman residing in Brooklyn. Knew Mr. Adams for five or six years. His temper was unusually passive and mild. His boys were frequently noisy and he did not appear to have the necessary energy to keep them in proper discipline. Am not able to state what he would do under circumstances of irritation such as he experienced, but never heard him saying as loud a word as could be heard across the room. I spoke harshly to him once myself unintentionally. He made no reply, but I saw that his feelings were much affected and that he shed a tear.

William M. Ironsides. Was employed in the granite building with Mr. Slocum. Slept in the third story. Noticed something singular one night about twelve o'clock. Had shut up the store and was going up stairs. Heard a great hammering and mentioned it next day. It was on Friday night and in one of the rooms on the second floor, to the right hand side. It sounded as if some one was nailing up a box.

Charles J. Walker. Am a picture-frame maker in the granite buildings. Asked Mrs. Octon for the loan of a saw on Thursday. She directed me to go to Mr. Colt for it. Went to his room and knocked two or three times. Heard some one inside sawing. Mr. Colt came to the door. Asked him for the saw and he told me to go to hell. The door was fastened inside and Mr. Colt opened it but a very little way.

John Golden. Am a milkman. Left milk at the basement saloon of the building corner of Broadway and Chambers street. Saw a man occupied in the vault of the saloon, opposite the area, the latter part of the week in September, working on boards. It was between seven and eight o'clock. The man was tall, and started when he saw me. He looked so wild I thought he was going to strike me. He had a saw and hatchet.

Mr. Monahan. Was foreman with Mr. Adams for fourteen months. Saw him in a passion twice—once when a man threatened to sue him. He replied that the other would get his money no sooner. Did not make use of bad language. Have seen him vexed. His pay-day was every other Saturday, and would have been such the day after he was missed. His bills amounted to a hundred or a hundred and fifty dollars. Do not know that he had made any arrangements to raise the money.

To *Mr. Selden.* Understood that the Butcher's Bank had a mortgage upon the office. He might have been a little behindhand with his workmen, but not

a great deal. Do not know whether he had any money with him on September 17th or whether he carried a pocket-book.

Mr. Sparks. Am administrator on the estate of Mr. Adams. He was a very good-tempered man. Have had the books in my possession since the thirteenth of October. They do not appear to have been regularly kept. Accounts were open which he should have credited. It is doubtful whether the estate is solvent.

Joseph L. Lane. Am father-in-law to Mr. Adams. He was married to my daughter about three years ago. Recognized the body at the dead-house by the scar on his left leg. He usually carried his money and papers about him in a large pocket-book.

Nicholas Conklin. Am a gunsmith. Was acquainted with Mr. Adams, and know him to have been of an amiable disposition. Himself and Mrs. Adams were at my house the evening before he was missing. Know the watch, and talked of buying it from him. He had it with him then.

A. M. C. Smith. Am an officer. Arrested Mr. Colt. Found the hatchet under a lot of papers and a trunk placed over them, found a pail there, and the other things already described.

John P. Brinkerhoff. Was called upon to have the contents of the sink at No. 42 Monroe street, cleared, and also that of the granite buidling raked, with a view to find clothing, but none was discovered.

Mr. Wheeler (recalled). Told Mr. Colt that I had let his room to Mr. Delnous, and he was anxious to get it and that I wanted his room, as Mr. Delnous had been obliged to sleep in my room that night. On the evening of the day on which we had the controversy about the rent, Mr. Colt came into my room. We spoke of his brother and I asked him if he (the brother), was the inventor of the patent pistol. He replied that he was and asked me if I had seen any of his pistols. Replied that I had not. He said he had one in his room and would go and get it and let me see it. He went in and got it. It had a pearl handle and four or six barrels—I think six; also explained to me a very ingenious mode of detonating with a cylinder; the barrels were about four inches in length. It had his brother's name on.

To *Mr. Selden.* The person I saw stooping down after I heard the noise, had his side towards the hall door and his head in a westerly direction. He was near the folding door. Cannot say as to the qualities of the pistol I saw. My attention was particularly attracted by the elegance with which it was wrought. Am certain he had the pistol three or four days before the 17th.

Mr. DeForest. Am French consul. Purchased a pair of Colt's pistols, of the pattern shown. Tried some of them on board the *Belle Poule.* When merely propelled by a cap the ball was sent 160 feet, struck and dented a board, and rebounded ten or twelve feet. When fired at twelve feet the ball went through two thick covers of a book. The sound is like the cracking of a whip. Cannot say the sound is like the clashing of foils.

James Short. Washed the body at the dead house. The rope was a very thick one. I saw

salt on the body and washed it off. Took out at least three pieces of skull. Saw no cuts about the jaw; only saw the head as if beat in with a hammer. Put the body in a coffin.

THE DEFENSE

John A. Morrill. Gentlemen of the jury, it now becomes the duty of the counsel for the prisoner—their solemn duty—to enter more minutely into the examination of the evidence which has been produced against the unfortunate individual who stands before you, a young man just entering into life, who has no friend around him but a brother, who is deprived by misfortune of the presence of his father—you know where his mother is, and also where are his beloved sisters. While you have sympathy for him, I must admit that you must also feel the loss sustained by the widow of Mr. Adams, one who has been bereaved by the loss of a tender and affectionate husband. The people ask that the laws shall be fairly administered, but while they do so, are sometimes carried away, and without thought will condemn an individual unheard. But the jury must lay aside these feelings, must lay aside feelings not only for the unfortunate prisoner, but for Mrs. Adams and for public prejudice. You must take hold of this case with clear, dispassionate minds, remembering to blend with justice the attributes of mercy. The counsel on the other side is all powerful, and it was necessary to fight the cause, as we have, from one step to another, knowing that "trifles light as air" may have much effect on a case like this. A man will fight for his life, and the counsel will contend not only for that life but for justice to the prisoner. It is with this feeling, and not with the view to detain the jury, that we have been thus minute. Gentlemen, John C. Colt, poor and friendless, a fellow citizen, comes before you charged with crime. He comes before you in defence of that life which is dear to all. He asks you to mete out to him justice —it is all he asks, it is all we ask. We seek but one thing—it is that we may have mercy according to law—and if he has such, we have no doubt that he will find a safe deliverance at your hands.

Samuel Colt. Am the inventor of Colt's patent firearms, and am acquainted with their construction. [Witness was asked to show some experiments touching the power of the pistol with a cap. He placed the balls in the cylinder of one about eight or ten inches long, and propelled them by precussion caps, which he stated to be of great strength. There was a loud report, and he caught the balls in his hand as they came from the barrel. He then fired at an open book at a few paces which he struck, the ball penetrating nine leaves and indenting twenty-four. He also tried a patent pocket pistol at a distance, which made very little impression.] Never made pistols with more than one barrel except at first, about ten years ago, and then only kept them as models.

Dr. Zabrisky. Am practising physician and chemist. Had at one period charge of the patent arms store in Broadway. Do not suppose that the skull could be penetrated by a ball propelled only by a cap. I was never able but once even to indent a fireboard with a ball sufficiently deep to make it stick. The patent article, when fired with powder, makes more noise than common firearms.

To a *Juror.* The impression did not appear to be so great at five feet distance as at twenty feet. Think it would be impossible for a ball to make a hole such as represented, in the head of deceased, by a ball from Colt's pistol, propelled by a cap.

Dr. Gilman. Was present at an examination of the body. In the cavity of the skull there was no foreign substance. There was a round hole over the left ear, a little back. It was made as if a round file had been applied to the inside of the hole. It is inconceivable that such a hole could have been made by a hatchet. It is more easy to suppose it could have been done by the driving of a nail. The appearance of the wounds in front are as if made by the hammer part of the hatchet. Think it improbable that the hole was made by a ball of any description.

Dr. Rogers. It is impossible to say what particular degree of injury would be necessary to create insensibility. In some cases, it is created by a very small sized wound—in others, even where the whole front of the top of the head was broken in, as a wound caused by the falling of a block from a masthead, where the man preserved his s nses throughout, and got well. A nail projecting into the box about an inch, I should suppose, must have penetrated the head of the body in any way it moved. The action of the body in carrying it to Maiden lane, putting it on board the vessel, and afterwards carrying the body to the dead-house, might have been sufficient to drive the nail through the head.

Victor Becker. Lived at No. 3 Murray street from May, 1840, to May, 1841. After we moved away, Mr. Colt went in. We left an awning in the garret. Saw the one at the Tombs. It was the same.

John N. Lee. Am an engraver and keep at No. 3 Murray street. Mr. Colt moved into the building in May. Saw a box in his room. He brought in a hatchet one morning and said it was very

handy. When he moved away the awning was gone. Never saw any irritability about him.

Cyrus W. Field. Am a paper dealer. Made paper to order and on account of Mr. Colt in July and August, 1841. The terms were to be one half cash and one half a good note. He gave the direction No. 3 Murray street. In August sent to inquire and he was not there. Soon afterwards, Mr. Adams came in, having in his hand a letter from Mr. Colt, dated Boston, and requesting I should let Mr. Adams have the paper. Told Mr. Adams the terms. The latter said Mr. Colt had always paid him and the books should not go out of his hands till the money was paid. I let him have ten reams. The balance of the paper was delayed in coming from Hartford and Mr. Adams was very anxious about it. On August 25th Mr. Colt came in and said it was too late for the trade sale, but, if I would give him time, he would take the balance of the paper and have the work perfected for the Philadelphia trade sale, getting his returns in time to pay for the paper. Mr. Adams thought the note of Mr. Colt would be good for the amount. The two lots came to $121.68 for which I took Mr. Colt's note at three months, which note is unpaid. The paper was sent to Mr. Adams' office. Understood the plates cost over $300.

[The head of Mr. Adams was here brought into court by the physicians and coroner, while the latter sat with it in his lap, wrapped up, beside the reporter's table. Colt sat on one side, within a few feet of it.

Mr. Selden, the *District-Attorney,* Doctors *Mott* and *Archer,* agreed that the head of Mr. Adams, which was in possession of the coroner, should be taken into an adjoining room and be examined and Doctor Mott afterwards give his evidence.]

Dr. Rogers (recalled). Have examined the head of Mr. Adams. Am well satisfied from the examination and comparing the hatchet with the wound, that the hole was made with the sharp side of the hatchet. It fits the wound precisely.

The *District-Attorney* requested that the skull and axe should be shown to the jury. *Mr. Selden* objected.

JUDGE KENT. However painful it is, justice must be administered and the head produced, if the jury think it necessary.

The *District-Attorney.* We are only seeking truth; desperate efforts are being made to break down the testimony. If it could be avoided I would gladly agree not to have the skull exhibited, but it was necessary that the jury should see it.

[The skull was then handed to Dr. Rogers by the coroner, and exhibited to the jury. The court room was crowded to excess and the head was held up in his fingers by Dr. Rogers. He placed the corner of the axe in the hole over the left ear, which precisely fitted it. He then put the hammer part in the fracture or indentation on the other side, which joined in it fairly as a mould. He then explained the wounds in front. Colt held his hands over his eyes while the examination was going on.]

Dr. Archer. The body has been twice exhumed to-day, and the skull taken from the coffin. The hole in the head seems to

agree with the corner of the axe; but the blow most likely to have caused insensibility was one struck behind, which the hammer part of the hatchet exactly fits.

Dr. Mott. Examined the skull. Think the small hole was inflicted by the hatchet. If the hole was made from a ball, it was different from what I have ever seen. Examined the wound behind. It is impossible to say how the party stood. Either of the blows here shown would have knocked any man down. Have seen a man recover and walk with nearly a quarter of his skull knocked in. No man can tell how many blows have been given.

Nathan G. Burgess. Am acquainted with John C. Colt. Have known him since 1837. Was engaged with him in Cincinnati in that year publishing Delafield's Antiquities of America. He was engaged previously teaching book-keeping. The work was got out in New York by subscription in 1839, we having come here for that purpose. It was published in the name of Colt, Burgess & Co., and we lost a thousand dollars by it. Am still indebted to Mr. Colt. He always treated me like a gentleman.

Caroline M. Henshaw. Have been acquainted with John C. Colt fifteen months. Have lived with him from the eleventh of May to the time he was arrested. We first lived at Captain Hart's No. 42 Monroe street. Mr. Colt was generally in from half-past nine to ten o'clock in the evening. On the evening of the seventeenth of September he was not home at the ordinary hour. He was frequently out with a gentleman named Moore, and I generally went to bed soon. He was always home before ten o'clock.

To *Mr. Selden.* He had been absent some time in the latter part of the week before. After that night he seemed strange in his conduct and disinclined in conversation. Was asleep when Mr. Colt came home that evening. Woke up when he had got on his night-shirt, and asked him what time it was. He said it was a little after eleven. Next morning he went away early. He returned about ten or half-past ten o'clock. Undressed, bathed himself with spirits, and went to bed. After he had got into bed, I went to the bed side, it being unusual for him to go to bed in the day. I observed on his neck a black mark. He generally slept with his night-shirt open, but for two or three nights afterwards he slept with his night-shirt pinned up.

To *Mr. Whiting.* First became acquainted with Colt at Philadelphia, at the house of Mrs. Stuart. Mr. Colt did not board there, but came with a gentleman. Did not live with him before I came from Philadelphia. At Mr. Hart's I passed by the name of Mrs. Colt. Did not furnish our own room. Mr. Colt's trunk stood in the entry. It was the same that Justice Taylor took, as was also the carpet-bag. Was not in the habit of going to bed at a particular hour. Sometimes early and sometimes late. When Mr. Colt went out of an evening I generally went with him. He was very seldom out, but when he was out I did not sit up for him, but generally woke up when he came into the room. He went out that morning before the ringing of the first bell, but I cannot say

whether it was a very long or a very short time. He did not return to breakfast. Did not observe that he had anything in his hands. Was surprised at his going out so early and spoke to him. When I first went in after he returned supposed he was going to change his dress. When I came to the bedside, observed his clothing on the back of the chair. His shirt was the last garment placed there. There were no spots or marks on it. It was after he had gone to bed that I saw the black spots on the neck. He lay in bed to the hour of dinner. He put on the same clothes he had taken off. Do not know what became of the shirt he took off. I might have seen it and washed it, but did not observe. Think he was home the whole Saturday evening; am not sure that he was so in the early part of the evening. On Sunday morning I took his breakfast up stairs to him. Think he was up and that he went out in the forenoon, but went to bed in the afternoon again. He was all the forenoon or all the afternoon in bed on Sunday. He slept soundly in the day, but did not sleep much that night. He appeared to be restless on the Sunday as he lay in bed, but did not appear to sleep much. Appeared to be coughing. Do not recollect his turning over and I discovering the other side of his neck. His conduct during the week previous to his arrest did not appear such as usual. He did not talk nor go into the parlor in company, as before. I tried to persuade him to do so, but could not. He was always very kind, very mild; treated me kindly always, and I do not recollect that I ever saw him in a passion. Am a mother by Mr. Colt. Am acquainted with his disposition and temper. Did not know there was a watch in the trunk when Justice Taylor took it, nor did I know then that he had been arrested. Did not know Adams. He was never at our house.

Sarah Hart. I know the prisoner, Mr. Colt and Caroline Henshaw. They lived in my house from the last of February, or beginning of March, to the middle of May. Mr. Colt was of very mild temper, very pleasant and every day alike, always pleasant and mild.

Mr. Selden. How did Caroline Henshaw act? (Objected to by *Mr. Whiting.*)

Mr. Selden. I wish to show that the only ground why she and Mr. Colt did not form the relation of man and wife, was owing to the breaking up of his business, and his inability to provide an establishment, but they both looked forward to the day when they could be united. His relation with her was one of the acts for which he has been called upon by public sentiment to answer, but she was no prostitute except as regarded him. He did wrong and she did, but adverse circumstances alone caused them to live together in the illegitimate manner they did. Still her character, every other way, was good. She came into court under circumstances which went to impair her reputation as a witness and I wish to show by this witness that she was deserving of confidence.

Mr. Whiting had no objection to allowing that the conduct of Caroline Henshaw had been good both at Catharine and at Monroe streets. They had not

impeached her character; but should the parties be permitted privileges now, be allowed to testify for each other, when they would be denied if they stood in the relation of man and wife, and still further, produce evidence of correct conduct?

JUDGE KENT. Unless the character of a witness is impeached the testimony should be disallowed. It is unnecessary to produce evidence as to the character of the last witness.

Henry W. Root, Richard B. Pullen, Isaac Hart, Samuel S. Osgood and *George Andrews* testified to the good temper and amiable character of Colt, and Robert Hoe and several others testified the same as to Adams.

Frederick Cary. Am a clerk with Ashton & Co., in Cedar street. Have known John C. Colt since August, 1840, when he was keeping a book store in Philadelphia. Have been at his rooms in Murray street and also at Chambers street. Saw the box and other things described. Saw a piece of looking glass in his room, which was against the wall and a piece of paper kept over it. Saw the hatchet in his room at Chambers street, about the 1st of August. Saw him have a new gold watch in September, some time after the 4th.

Mr. Brinckerhoff. Am superintendent of the Poudrette Co. Had cleaned the sink at Monroe street and Broadway and Chambers but discovered nothing. Within the last two days, however, the latter sink had been cleaned. We found some cloth, some portions of a towel and a bundle. Found in it a hat, a pair of shoes, a pair of pantaloons, part of a shirt, a pair of suspenders and a vest. From the condition of the bundle and the state of the garments, supposed the bundle must have been overlooked on the first examination. Some things were found this morning—a pencil case, some keys, a half-dollar piece, and other things. They were not found in the bundle.

Robert Emmett. Called upon the Mayor about ten days after the arrest. Asked him if he did not feel bound to aid in efforts at discoveries tending to convict or clear the prisoner, without communicating the result to the District Attorney. At first he thought he could, but his final answer was in the negative.

Mr. Blake (recalled). Thought the pencil case found in the sink might have belonged to Mr. Adams. He had one that made a similar noise when it was drawn out. Do not recognize any of the keys.

Mr. Monahan (recalled). Thought the key here shown was the one that Mr. Adams carried in his pocket. It belonged to his office door.

Mr. Emmett (to the jury). We will admit that Colt took the life of Adams, and we now propose to tell you, as far as possible, how it was done. As the counsel for Mr. Colt, I state what he would if he were to stand up before you. It is not for you to receive it other than as a statement of facts, which you are authorized to reject or receive. I will read what would be the statement of Mr. Colt, were he called upon to

give the facts in reference to it. We have a right, as none but the God above us saw the transaction, to show the manner in which the act was done. I shall speak in the first person.

"Samuel Adams called on Friday at my office, as near as I can recollect, between the hours of three and four o'clock. Whether he had any special object in view in coming at that time or not, I cannot say. When he entered my office, I was sitting at my table, as usual, and was at that time engaged in looking over a manuscript account book, as I had been engaged in this work for one or two days previous, that is, I was reading over the entries and reconsidering the arithmetical calculations belonging to the entries, etc. Mr. Adams seated himself in a chair near the table and within an arm's length of myself, so near that if we both leaned our heads forward towards each other, I have no doubt but that they would have touched. I spoke of my account, which he had at my request handed to me ten or twelve days before. I stated to him that his account was wrong, and read to him at the same time the account, as I had made it out on another piece of paper, and requested him to alter his account as I had it. He objected to it at first, saying that I did not understand printing. He however altered his figures as I read them from my account. I made the remark that I would give ten dollars or some such sum if I was not right. After he had altered his figures, and on looking it over, he said that he was right at first, and made the remark that I meant to cheat him. (In the meantime we had both been figuring, on separate papers, part of the account.) Word followed word till it came to blows. The words "you lie" were passed, and several slight blows, and until I received a blow across my mouth and nose which caused my nose slightly to bleed, I do not know that I felt like exerting myself to strong defence. I believe I then struck him next violently with my fist. We grappled with each other at the time, and I found myself shoved to the wall, with my side and hip to the table. At this time he had his hand in my neck handkerchief, twisting it so that I could scarcely breathe, and at the same time

pressing me hard upon the wall and table. There was a hammer upon the table which I then immediately seized hold of, and instantly struck him over the head. At this time, I think, his hat was nearly in my face, and his face, I should think, was downwards. I do not think he saw me seize the hammer. The seizing of the hammer and the blow was instantaneous. I think this blow knocked his hat off, but will not be positive. At the time I only remember of his twisting my neck handkerchief so tight that it seemed to me as though I lost all power of reason. Still I thought I was striking away with the hammer. Whether he attempted to get the hammer from me or not I cannot say; I do not think he did. The first sense of thought was, it seemed, that his hand or something brushed from my neck downwards. I cannot say that I had any sense or reflection till I heard a knock at the door. Yet there is a faint idea still remains that I shoved him off from me, so that he fell over; but of this I cannot say. When I heard the knock at the door, I was instantly startled, and am fully conscious of going and turning the key so as to lock it. I then sat down, for I felt very weak and sick. After sitting a few minutes, and seeing so much blood, I think I went and looked at poor Adams, who breathed quite loud for several minutes, threw his arms out and was silent. I recollect at this time taking him by the hand, which seemed lifeless, and a horrid thrill came over me, that I had killed him.

About this time some noise startled me. I felt agitated or frightened, and think I went to the door to see if I had fastened it, and took the key out and turned down the slide. I think I stood for a minute or two, listening to hear if the affray had caused any alarm. I believe I then took a seat near the window. It was a cold, damp day, and the window had been closed all day, except six or eight inches at the top, which I let down when I first went to the office, and which remained down all the time I occupied it. I remained in the same seat, I should think, for at least half an hour, without moving, unless it was to draw the curtains of the window close, while they were within reach. My custom had been to

leave the curtains about one-third drawn from the side of the window towards Broadway. The blood, at the time, was spreading over the floor. There was a great quantity, and I felt alarmed lest it should leak through into the apothecary's store. I tried to stop it, by tying my handkerchief round his neck tight. This appeared to do no good. I then looked about the room for a piece of twine, and found in a box which stood in the room, after partially pulling out some awning that was in it, a piece of cord, which I tied tightly round his neck, after taking the handkerchief off, and his stock, too, I think. It was then I discovered so much blood, and the fear of its leaking through the floor caused me to take a towel, and gather with it all I could, and rinse it into the pail I had in the room. The pail was, I should think, at that time about one-third full of water, and the blood filled it at least another third full. Previous to doing this, I moved the body towards the box, and pulled out part of the awning to rest it on, and covered it with the remainder. I never saw his face afterwards. After soaking up all the blood I could, which I did as still and hastily as possible, I took my seat again near the window, and began to think what was best to do. About this time some one knocked at the door, to which, of course, I paid no attention. My horrid situation remained from this time till dark, a silent space of time of still more horrid reflection. At dusk of the evening, and at the same time some omnibusses were passing, I carefully opened the door, and went out as still as possible, and I thought unheard. I crossed into the Park, and went down from thence to the City Hotel, my purpose being to relate the circumstance to a brother who was stopping at that house. I saw him in the front reading room, engaged in conversation with two gentlemen. I spoke to him, a few words passed between us, and, seeing that he was engaged, I altered my purpose, and returned as far as the Park. I walked up and down the Park, thinking what was best to do. Many things I thought of—among others, was going to some magistrate, and relating the facts to him. Then the horrors of the excitement, a trial,

public censure, and false and foul reports that would be raised by the many who would stand ready to make the best appear worse than the worst, for the sake of a paltry pittance gained to them in the publication of perverted truths, and original, false, foul, calumniating lies, all this, added to my then feelings, was more than could be borne. Besides, at the time, in addition to the blows given, there would be left the mark or evidence of a rope drawn tightly round the neck, which looked too deliberate for anything like death caused in an affray. Firing the building seemed at first a happy thought, and all would be enveloped in flame, and wafted into air and ashes. Then the danger of causing the death of others (as there were quite a number who slept in the building), the destruction of property, etc., caused me at once to abandon the idea. I next thought of having a suitable box made, and having it leaded inside, so that the blood would not run out, and moving it off somewhere and burying it. Then the delay of all this, and great liability of being detected.

After wandering in the Park for an hour or more, I returned to my room, and entered it as I had left it, as I supposed, unobserved. Wheeler's door was open, and he was talking to some one quite audibly. I went into my room, entering undetermined, and not knowing what to do. After I was seated in my room, I waited silently till Wheeler's school was out, and his lights extinguished. During this suspense, it occurred to me that I might put the body in a cask or box, and ship it off somewhere. I little thought at this time that the box which was in the room would answer; I supposed it too short and small, and entirely unsafe, as it was quite open. Wheeler's school being out, I still heard some one in his room, and, as I then thought, laid down on some benches. The noise did not appear exactly like a person going to bed. I could hear the rustling of no bed-clothes. I felt somewhat alarmed, but then the idea occurred to me that it might be the person who Wheeler stated was going to occupy the room that I then occupied as a sleeping room

as soon as I gave it up, which was to be in about ten days' time, was temporarily occupying his room for that purpose. Relieving myself by this thought, I soon lit a candle, knowing that no time was to be lost; something must be done. This was about nine o'clock, I should think. Having closed the shutters, I went and examined the box to see if I could not crowd the body into it. I soon saw that there was a possibility of doing so, if I could bend the legs up, so that it would answer if I could keep some of the canvas around the body to absorb the blood, and keep it from running out. This I was fearful of. It occurred to me, if I bury or send this body off, the clothes which he had on would from description discover who it might be. It became necessary to strip and dispose of the clothes, which I speedily accomplished, by ripping up the coat-sleeve, vest, etc., which removing the clothes, the keys, money, etc., in his pockets caused a rattling, and I took them out and laid them on one side. I then pulled a part of the awning over the body to hide it. I then cut and tore a piece from the awning, and laid it in the bottom of the box. I then cut several pieces from the awning for the purpose of lessening its bulk, supposing it was too much to crowd into the box with the body, *i. e.*, it would not go in. I then tied as tight as I could a portion of awning about the head, having placed something like flax, which I found in the box, with the awning. (This flax or swindling tow came from a room I had previously occupied, No. 3 Murray street, also the awning.) I then drew a piece of this rope around the legs at the joint of the knees, and tied them together. I then connected a rope to the one about the shoulder or neck, and bent the knees toward the head of the body as much as I could. This brought it into a compact form. After several efforts I succeeded in raising the body to a chair seat, then to the top of the box, and turning it round a little, let it into the box as easy as I could back downwards, with head raised. The head, knees, and feet, were still a little out, but, by reaching down to the bottom of the box, and pulling the body a little towards me, I readily pushed the head in and feet. The

knees still projected, and I had to stand upon them with all my weight before I could get them down. The awning was then all crowded in the box, excepting a piece or two which I reserved to wash the floor. There being still a portion of the box, next to the feet, not quite full, I took his coat, and, after pulling up a portion of the awning, crowded it partially under them, and replaced the awning. The cover was at once put on the box, and nailed down with four or five nails, which were broken and of but little account. I then wrapped the remainder of his clothing up, and carried it down stairs to the privy, and threw it in it, together with his keys, wallet, money, pencil cases, etc. These latter things I took down in my hat and pockets, a part wrapped in a paper, and a part otherwise. In throwing them down I think they must have rattled out of the paper.

I then returned to my room, carried down the pail which contained the blood, and threw it into the gutter of the street; pumped several pails of water and threw it in the same direction. The pump is nearly opposite the outer door of the building; then carried a pail of water upstairs, and repeated said washing to a third pail; then rinsed the pail, returned it clean and two-thirds full of water to the room; opened the shutters as usual, drew a chair to the door, and leaned it against it on the inside as I closed it. Locked the door and went at once to the Washington bath house in Pearl street, near Broadway. On my way to the bath house, went by a hardware store, for the purpose of getting some nails to further secure the box. The store was closed. When I got to the bath house, I think by the clock there it was eight minutes past ten. I washed out my shirt thoroughly in parts of the sleeves and bosom, that were somewhat stained with blood from washing the floor. My pantaloons in the knees I also washed a little, and my neck handkerchief in spots. I then went home; it wanted, when I got home, about five minutes of eleven o'clock. I lit a light, as usual. Caroline wished to know why I came in so late. I made no excuse, saying that I was with a friend from Philadelphia, I think,

and that I should get up in the morning early to go and see him off. I went to the stand and pretended to write till she became quiet or went to sleep. I then put out the light and undressed myself, spread my shirt, etc., out to dry, and went to bed. In the morning, at about half-past five o'clock, I got up, put my shirt and handkerchief, which were not yet quite dry, into the bottom of the clothes-basket under the bed. Always changed my shirt on going to bed. In the morning put on a clean shirt and handkerchief and was nearly dressed when Caroline woke up. I said to her that it was doubtful whether I should return to breakfast. Did not return; went to the office, found all apparently as I had left it. Went after some nails; got them at Wood's store; the store was just opening; returned to the room; nailed the box on all sides; went down to the East river, to ascertain the first packet for New Orleans. Returned to my room—marked the box—moved it myself, but with great difficulty, to the head of the stairs—did not dare to let it down myself—went to look for a cartman—saw a man passing the door as I was going out—requested him to help me down with a box—he got it down without any assistance—preferred doing so—paid him ten or twelve cents—went down Chambers street for a cartman whom I saw coming towards Broadway—hired him to take the box to the ship, foot of Maiden lane—went with him. While he was loading the box I went to my office for a piece of paper to write a receipt on—wrote a receipt to be signed by the captain, on my way down the street—did not offer the receipt to be signed, but requested one, which the receiver of the box gave me. A clerk was by at the time and objected to the form of the receipt, and took it and altered it—wished to know if I wanted a bill of lading. I first remarked that as there was but one box, it was not very important; however that I would call at the office for one. Did not go for a bill of lading. Tore up the receipt before I was two squares from the ship. Returned to my office, by way of Lovejoy's Hotel in the park. Went to the eating room, called for a hot roll and coffee; could not eat. Drank

two cups of coffee. Went to my office, locked the door, and sat down for some time. Examined everything about the room. Wiped the wall in one hundred spots. Went home and to bed."

We had intended to state the facts to the public, but circumstances induced us to await the trial. When I first saw Mr. Colt he was a perfect stranger to me. After hearing the particulars, it was our intention to make the matter public, but decided otherwise. Mr. Colt consented to it only with the understanding that he should yet make the statement.

[The *District Attorney* asked if such a course of remarks were proper. The COURT answered that the communications made by Mr. Colt were not admissible.]

Mr. Emmett then explained the law upon the subject, and went fully into it—read the various laws and precedents governing the case, reviewed the evidence, and concluded by a most eloquent appeal to the jury.

Mr. Selden. My remarks shall not extend to a length unnecessarily to trespass upon the time of the jury, for the statute gives to the jury the decision as to the law as well as the facts. The act in relation to concealing the body must not be connected with the idea itself. Even if you adopt the suggestion that breaking in the frontal bone was to conceal the body, it can have no bearing upon the decision as to the guilt or innocence of the defendant. Do you suppose it was a feeling of cruelty, for the purpose of mangling the body at his feet, as alluded to by the prosecution? I believe the wounds were given before the body of Mr. Adams was struck down. Mr. Colt would not have resorted to disfiguring the head to insure concealment; it was the last course that a man of mind would resort to. Adams lay prostrate at the foot of the prisoner—he fell, and the attention of those in the adjoining room was attracted by the noise—they listened—not a sound was heard, not a groan uttered. Where was the prisoner then? He was hanging over the body of his victim, contemplating the ruin that had been created. The transaction took place at half-past three, and it is said his

room was watched till nine. Do you not believe that he knew the movements of those outside? What sensations would likely be produced in his mind? No one put their hand upon the door for the purpose of entrance. He was in terror of his situation. He knew that no person had witnessed the act; that his situation, living in a state of profligacy, was against him—he had nothing on which he could fall back as to connection or character, and was not in a condition by which he could hope for credence in making his situation known. There is no man but under such circumstances would have resorted to concealment rather than disclose what occurred. He determined upon the plan, and set out to put it in execution. "Poor Adams is dead," said he, "and I shall have to meet the consequences or conceal what has been done by all means within my power." Yet the means had nothing to do with the offence unless collected for that purpose, and that they were not so has been proved. He resorted to the plan of placing the body in a box—it could not stay in his room, to attempt bringing it or throwing it into the sea, would be certain to cause detection, and it was disposed of in the best manner he thought possible. In relation to the catastrophe itself, Adams was standing on his feet, and fell dead upon the floor, and face to face. The testimony of Mr. Wheeler, on looking through the key-hole, shows the body to have been near the table. Suppose Colt had Adams by the throat, there could have been no outcry. Adams could not, and Colt would have had no reason to; but in that case Colt would have been the victor, and had no need of resorting to other means of defence. But, on the contrary, Adams had Colt by the throat, and there was necessity of resorting to other means of defending himself. The axe lay on the table, where it would necessarily in that small room be placed. Colt seized it, and in self-defence struck the blows. It was all done in an instant's time. The first blow may have deprived Adams of speech, but had the muscular power continued, it would cause him to hold with stronger grasp on the neck-cloth of Mr. Colt. General Hamilton, on

being shot, sprung from the ground before he fell; and young Austin, after he had been shot in the head, advanced upon Selfridge, and struck him some violent blows before he fell dead.[6] The effect of the blows on Adams' head, while he held Colt by the neck-cloth, would cause him to hold with still greater pertinacity. His head would necessarily be thrown back to avoid the hatchet and placed in a position which would be likely to receive the blows that have been shown. As to the idea of the pistol, is it probable the prisoner would have used the hatchet when he had the other, whereby he would have avoided detection,—for, although the ball might not penetrate through the skull, a very slight addition of gunpowder would have caused death. With what caution circumstantial evidence should be received, is shown by the testimony of Mr. De Forest, for had it not been for subsequent proof to the contrary, it would have been believed that the deceased could have been shot by the mere action of the cap, and had been so. As to the motives of the prisoner, let us glance at them. The prosecution had been commenced with an idea that the box was prepared and the hatchet newly purchased for the purpose, and a sort of mortification appeared observable when it turned out that the prisoner had owned them so long. Is it likely, if he had contemplated killing Adams, he would have brought them into his own room, from which he would have been compelled to remove the body, and where he would be so likely of discovery? He did not take his life from motives of revenge, he had none to gratify. Was it for gain? Had he been disposed to seek money in this way, he would have marked out a more wealthy victim than poor Adams. On the contrary, the supposition of a sudden quarrel between them is borne out by the fact that Adams left Mr. Wells' store between two and three o'clock, in an angry state of mind, for the purpose of going to Colt's room. It had been stated that the idea was conceived by Colt after his arrival, for the purpose of plunder. The evidence of the articles found in the sink, and which

[6] See post, Vol. 2 American State Trials.

had been there since, shows this not to have been the case. Had he premeditated to kill Adams for the sake of the watch, he must have known also that the body would have to be disposed of. Broadway was extremely noisy at that time of day, and sounds were not heard; but would not Colt have known that there was but a thin door between him and Mr. Wheeler, and the cry of a victim would probably be discovered? It was shown that Colt had a pistol. How easily, had he premeditated taking life, could he have decoyed Adams to some other place, where he would have no trouble with the body. Had he taken the life of Samuel Adams for the sake of the watch, would he not have told his friends at Monroe street that the plunder was in his trunk, would be discovered by the officers of police, and bid them to remove it, twenty-four hours having elapsed from the time of his arrest, during which he had continued intercourse with his friends; and the house being searched, the watch fell into his possession as the other things did, and he thought no more of it than of the others. Osgood, who occupied the room next to Wheeler's, went to Boston, carrying his carpet-bag, and the District Attorney seemed desirous to fasten on the idea that Colt had chosen the time when Osgood was away, to effect a premeditated purpose. Is it inconsistent to suppose that Adams gave Colt possession of the watch previous to the quarrel in order to perfect a sale, in which case it would not be thrown away as the other things were? The idea might have occurred to him that Samuel Adams left but little, and here was some valuable property that at some day might be restored to his family. The learned counsel said this morning that Caroline Henshaw's testimony was not entitled to confidence,—that she was living in a state of adultery with Mr. Colt. If he means to apply that to her general course, he is much mistaken. I have seen those who pretended virtue guilty of vice—have seen the wife whose word was no better than that of the mistress. She may have been guilty on one point, but is entitled to credit as regards every other. Her testimony showed that she loved the prisoner, yet was deter-

mined to tell the truth. Caroline Henshaw had access to the trunk, and Colt knew it. He was aware that the watch was an elegant one, of peculiar workmanship, and must be discovered in case he afterwards attempted to wear it. Is it likely he would have plundered another of such an article as that, and have committed murder in order to do it? Except what was shown yesterday, in respect to the articles found in the trunk, there is no evidence that Samuel Adams had anything about his person. He was not a man likely to have had money about him; he was pressed on all sides, and his books disclose it. There is nothing on the books that gives evidence of his having received a dollar of money. Had any money been in possession of Adams, Lane, Mrs. Adams or his foreman would have known it, and the District Attorney been ready to prove the fact. Now for the quarrel. God forbid we should say anything against Mr. Adams, his character or his conduct. The name of John C. Colt is stamped upon the record of criminal jurisprudence; he has been represented as if he had been born for blood,—has been persecuted and maligned; but it is not for us to visit the idea upon the unfortunate deceased. Adams went to Colt's room in a "vexed mood," having expressed surprise to Mr. Wells that Mr. Colt expected the proceeds of the sale. Mr. Colt owed Samuel Adams only seventy-one dollars, but he contended that he owed him more. Out of that account words came up, which produced blows, and terminated in death. Mr. Adams had hold of Mr. Colt in a manner to prevent him crying out, and caused him to use the hatchet in self-defence. The temper he repeatedly exhibited may have grown out of misfortune. On three occasions he has shown it, by saying, "You intend to cheat," or, "You intend to swindle me." The present quarrel is involved in darkness, and who commenced it is not proved, but enough is shown to convey an idea of the fact. As to the wounds on the back of the head of deceased, they could have been produced by the fall, and probably were so, or may have been caused by the prisoner, in efforts to get the body into the box, or in other ways subsequent to the

quarrel. The pieces chopped off were found in the box when opened at the dead house. Everything bears the evidence of wounds being given in self-defense. The counsel said we should have shown where we purchased the nails. It would be as easy for a storekeeper to prove the transfer of a cent, as to prove who bought a penny's worth of nails. It was also said that the mark on the neck of Colt was caused by getting down the box. The mark seen by Caroline Henshaw was on the jugular vein—a man receives a weight on his shoulder, not on his neck. The pinning up of his shirt shows a feeling of innocence rather than guilt. The counsel also said that the new engagement to occupy the room a week longer, showed a premeditated design. Mr. Colt could have easily got the watch without planning it for a week, or resorting to an act of violence. The counsel, when he spoke of the little mementos of hair, said they were found among the rubbish. He has subverted the testimony—they were found in the pocket-book. In regard to the saw, the witnesses were alarmed—the cry of blood had gone forth—and the circumstances were represented as occurring at times different from when they took place. Mrs. Octon said Colt got and returned it on Thursday, and yet Delnous said that he heard it going on Saturday morning. Mr. Colt was publishing a book, and is it too much to suppose he had been engaged in sending some of them off? The witnesses no doubt intended to represent things truly, but they have confused the dates. The prisoner had not been treated by the prosecuting officers with ordinary courtesy or ordinary kindness. When examinations were made in the sinks at Monroe and Chambers street, nothing had been stated by the police to the prisoner, so that some person in his behalf could have been present to witness that it was done fairly. Mr. Brinckerhoff gave evidence as to the clearing of the sink, showing that the articles had been placed there from the first; but an effort was made by the prosecuting officers to show that the property had been placed there after the indictment was found; but it had failed. The government has as good

a right to protect as to prosecute the prisoner, and testimony should not have been presented that was not well founded. It was sworn that deceased had been salted down, but it was sworn by persons not entitled to credit, and it is satisfactory to find that the indignation which had been created in the public mind is changed to simple curiosity. The witnesses all testified differently, and poor Jemmy Short, on leaving the stand, said that Adams was salted. But did any of them feel the chrystalized matter with their hands? Jemmy Short first said he washed the body before the doctors examined it, and afterwards stated the reverse. Justice Taylor (who, with the head of the city government, is the only man who has shown any mercy to the prisoner), together with the Mayor and highly respectable physicians, say there was no salt on the body. The officers of police, many of whom are not men of confidence, were allowed to testify, and Dr. Chilton sent to examine the spots, but no one could analyze the articles found with the body.

When the wife was here, one of the salt men was directed to bring up the bloody garments and shake them under her very nose. Although the death of Adams had not been denied, the testimony must be brought up to make an effect on the audience. Even the grave was opened, and the head severed from the trunk. The physicians said they could examine it in another room, but it was necessary to place upon the table of a court the head, in order that you, gentlemen of the jury, might be influenced by the feelings observable among the multitude. A charge was made that a pistol had been used, and the brain searched to find a ball. Could the prisoner have obtained the exhuming of the body to prove his innocence? The activity of the police has been brought into exertion, in a manner such as I have never known, in order to convict the prisoner, and his case has withstood them all. He is entitled to the sympathy of a jury of his country. I ask only for the exercise of that principle of law, which says that where there is a doubt, it must be placed in favor of the prisoner. When there are two degrees in the statute—one

that will cause a limited degree of punishment, and the other show excusable homicide, if there is a doubt as to which the case belongs, the jury is bound to present a verdict of acquittal. The jury has been kept aloof from external events, and can now see that what at first seemed murder, is but an accident. A prisoner is not bound to show justification, it is for the jury to decide.

Gentlemen, after nearly a fortnight's trial, the cause of the prisoner is now committed to your hands, a young man just entering into life, his prospects probably have been permanently blasted—but still it is for you to pass upon the facts. We leave his cause with you, requesting you to bear in mind justice as well as mercy, is a portion of the attributes of the criminal law.

Mr. Whiting. We are about to close. Blood has been spilt, shall we flinch in the performance of our duties, or fulfil our oaths, not only do justice to the unfortunate person, but to ourselves and the country. The counsel has not attempted to show that the prisoner is not guilty, but I have been placed on trial, and charged with doing everything malignant. If I am such as they describe, the sooner you get another to fill the office of District Attorney the better. If doing everything to facilitate counsel for the prisoner, if ever having read the accounts in the papers, makes me guilty, then I am so, then have I persecuted their client to the death; if furnishing copies of all the affidavits, and showing favor to the prisoner, such as none ever was shown, then am I guilty. But I appeal to twelve honest hearts whom I see before me, that I have done nothing since this trial has commenced but what was strictly enjoined upon me by my duty. What do the counsel mean by their aspersions? As to the last gentleman who has spoken, if, peradventure, a little jealousy has entered into his feelings I will only say that if I ever go to the legislative halls, I will return to the people having performed all the pledges that have been enjoined upon me, and when I go from this trial to the bosom of the community I shall feel that I have performed the oath that

I have taken. As to the threats of the other gentleman, that I deserved impeachment, I can only say that his threats have no terrors. Perhaps I deserved blame, let not a hair of the prisoner's head be hurt, think not of me, they said I had a feeling of triumph, triumph of what—if it were in my power, I would unclose this man's chains and say "go." I would, after performing my duty, take that man's hand and hear from his lips that I had done no more than my duty. Has John C. Colt been unfairly dealt with? After making every effort to procure evidence, the counsel were offended because we proved the contents of the box; they observed that they intended to make a confession. That confession we do not hear of before, not even when the counsel first opened the case. Suppose we had been contented to do as the counsel spoke of. They had the confession in their pocket, and yet cross-questioned every witness that came up, and even stated, in opening, that we had not proved our case—yet they charged us that we had kept the jury day after day. I advise the counsel to beware how they sport with the lives of their clients; how they come to defend a case and still claim to have a confession in their pocket. Had the gentleman said, we do not dispute that he killed Adams, put him in a box, and put him on board a vessel, how long would it have taken to try the case? and how much more would it have redounded to the credit and ingenuousness of the counsel? But this is a circumstantial case, and the counsel had time to write a confession, but it is at variance in all its main points with the evidence and the probabilities of the case. Our duty is to ascertain the truth. The gentlemen say we are seeking triumph, but gentlemen that know not themselves know not us. We ask you faithfully to perform your duty —no man need to have his frontal marked with any better character. "Well done, thou good and faithful servant." If we maintain the laws against the lawless and against the bandit it is all the success we ask. Would to God I could look into the testimony this day and aid you to relieve this prisoner rather than convict him. But are we never to con-

vict? What have you or I to do with the consequences?

You are to remove all doubts from your minds and pronounce upon the guilt or innocence of the prisoner—you owe that to your oaths, your country and your God. You come from the body of the community; I could have rejected every man from that box who had ever seen his face, but I did not press it. I would take twelve of his friends to try him, provided they were men of truth and integrity; you are simply to enquire into the circumstances of the case; if he killed Samuel Adams to get rid of a debt or without apparent cause it is murder; but if Samuel Adams went there armed—made an attack upon him and he found it necessary to use the hatchet in self-defence, it was justifiable homicide; you are to pass upon the facts without reference to the excitement without these walls, and the excitement within. One of the counsel for the defence has told you that you must give a verdict of acquittal, even if you did so at the risk of your lives in passing through the crowd—they have told you that the mind of the community is made up—they have complained of the public prints (which have been sedulously kept from you), and said everything to operate on your prejudices.

We claim this case to have come under the first class of murders. Killing a human being is not murder—it is the killing with an evil mind—with a bloodthirsty heart. The law was beautifully laid down three thousand years ago. "He that smiteth a man will surely die." He that comes upon his neighbor with guile to slay him shall be destroyed, said the Almighty. We now appeal to the laws of man as well as of God. Show me the land where the laws are not administered, and I will show you the innocent in despair; but let me see that where the laws are observed, and I will exhibit the smile of the Almighty God upon it. I will present the facts without reference to the confession, which the gentlemen had no right to offer unless they put in a plea of guilty; but I shall examine it; if you can bring in a verdict less than the charge, do so; but you must do so without reference to the confession, for that will not bear you out.

What are the facts? Samuel Adams went to this man's room. He possessed the reputation of being more mild than men in general—but even suppose that he was a little irritable, is that any excuse for his being killed? These books were to go to the trade sale; not to bring four hundred, but one hundred and twenty-five dollars; Mr. Adams probably wanted all the money he could get; he was told that Mr. Colt meant to appropriate the proceeds; it was said he was vexed, surprised, but even say that he was angry. His answer was, I will go and see. Mr. Adams did not take the direct line to Colt's. His passion, even if he had any, had had time to cool, as the heat of the iron from the forge of the blacksmith, when exposed to the atmospheric air. His gait, when seen, was of the ordinary description, not faster. We cannot say that there was an agreement between them to meet, because the evidence does not fully go to show it. We saw him at three o'clock at the door of Mr. Colt. How did he get in—did he knock or did he go in unasked—the confession does not tell it—where had he been the previous day? are we informed on that point. Mr. Colt occupied a little room in Murray street, his furniture was an empty box, a table and some chairs; he moved to Chambers street, and all the witnesses, with one exception, agree that the furniture in that room, up to the 17th of September was the same. There was no awning; even the clerk in the dry-goods store, that saw something, could not tell whether it was a piece of cotton or woolen cloth. The boy tells you that the awning was in the garret in July, but the father of the boy was permitted to go to sea on Saturday, without being brought on the stand. But the mind of the boy was still uncontaminated. Things have been so ordered, unfortunately for the prisoner, that what the testimony for the prosecution failed in proving, that brought by the defence confirmed. The little boy proved that he took the awning. What for? for what purpose was the awning taken? He knew that a great noise had been made about the awning being gone, yet said nothing about it. The prisoner would not steal it; he was a

man of too high honor; the woman clamored about it, and had it been long anterior to this deed, the woman would have been placed on the stand to testify to it; but she did not come, and was a stranger to us. It was said that the box and the hatchet had been some time in his possession. Had I pursued this prosecution as the counsel stated I did, I should have hunted up the woman that owned the awning; I should have found men that knew Colt; I should have seen every cent that was paid to Adams; but I gave such evidence as was presented to me. We infer he took it on that night, but suppose he had taken it before; for some object, for some purpose, for men do not take an awning unless they have some use for it, or intend to raise money. He had not shown from whence the box came or where it was made, nor if the cleets were on. As to the hatchet,—where is the testimony that the hatchet was there? One called it a shingle hammer, and the other did not know. But this hatchet is a new one—the handle is new—the blade is new. As to the place where he would be likely to keep it, even if it had been in his room, would it likely have been kept on his table, when the windows were open? When he is in his shirt-sleeves, in summer time, is it likely he would have it on his table, or would it be kept in his empty box, or some corner? The hatchet still had the string on it, and that it not usual for an old hatchet. But still it was on the table, as stated by the counsel, when Mr. Adams came into the room. Mrs. Octon said the day before he borrowed a saw. Mr. Selden could only account for it by the witness being mistaken, or that another box had been previously sent away; but had that been the case, proof could have been shown when it went away, and where it went to; but the evidence of Mrs. Octon and the man both declared it to be that day—the door of Mr. Colt's room was locked—he was secretly occupied in his little room, and the answer was, "Go to hell." A murder was intended, but whether on Samuel Adams or some other can not be stated.

This gentleman is represented to be everything mild, kind and affectionate—and yet when interrupted shows a diabol-

ical temper. What did he want the saw for? If we assume the box was already there, he might have been sawing the cleets, or he might have been making the cover—at any rate we have reason to believe he was doing wrong, because he was acting in secret. Had there been no improper intention, he would not have locked the door. Colt had the saw for half an hour, during which there had been time probably to make the cleets, and not the cover. I am willing to shut out the testimony of the milkman, but as it has been referred to, we will mention that he saw a tall man at the foot of the stairs of the vault, with a box, a hatchet and a saw. At the time of Samuel Adams' going into Colt's room, did he knock, or did he go in without? did Colt immediately strike him from behind as he entered the room? As the gentlemen say, none but the Almighty God and themselves knew what happened. It does not matter when Adams came into the room, whether he was struck by the hatchet, or was shot—it is still murder. When Dr. Gillman referred to the hole, the idea flashed upon my mind that a pistol had been used, and such appears still to have been the case. Why should every blow leave a fissure but this? All the rest exhibit such, but here is a clean round hole. I would ask the professional gentlemen how they account for the difference? Did Dr. Mott, or any other gentleman, ever see an oblong round hole that had been made by a hatchet? I do not mean to say it was made by a pistol ball; I do not know how it was made; perhaps Adams did not; perhaps none but he (pointing to prisoner) knew. How is it possible for such a blow to have been made from in front by a hatchet; the man who has nothing but the defence God has given him when attacked by another with a hatchet, will seize the arm; but will Dr. Mott, or any other physician, place his professional reputation on the idea that blows from a hatchet represented the sound of foils? Adams must have received his death-blow about fifteen minutes past three. No sound was heard, no voices, nothing but the momentary clash and the fall. If Adams had been a man sufficiently strong to hold the prisoner off at arm's length, would the blows from

the hatchet have been struck on the rear of the head or directly in front? How, then, did the blow come, and could the deceased have kept his hold when his head had been stove in? Dr. Rogers gives some little idea of the kind, but he must speak of some other order of men. If men can strike so hard as Austin and others are said to have done—can hold their grasp so fully after being struck as has been represented, soldiers, before going to the field, should have their brains knocked out, as they would fight much harder. Dr. Rogers said the whole of the front part might have been knocked in by a single blow; but had that been the case, pieces of the hat as well as the brain would have been knocked in. But Dr. Mott sets the matter at rest by saying that several blows were given. We have to judge of the fact, and the skull exhibited deep cruelty in the murder.

I have done everything that has been asked of me, and the remarks of the gentleman in allusion to me were made because he does not know me. I should have said to him had he called upon me, that I felt the life of this prisoner was in my hands, and I will do everything in justice that is possible to save him from the strongest penalty of the law. If, gentlemen of the jury, I have pushed this case too far, blame me; but, as a prosecuting officer, have I done so? If the hat had been knocked in by the hatchet, why cut it in the center?—was it to chip out the marks of a pistol ball? The testimony has not been allowed to show us whether the hat was cut at the sides or in rear and front, nor whether a piece was cut out or not. But why destroy the hat? Even allowing the bundle to have been put into the sink that night, it was placed there by him, and why did he cut it? Would a man who had unintentionally taken the life of his neighbor have proceeded in the formal manner he did to fold up the pantaloons, the suspenders, cut the hat, and then place them where he did, or would he, in his trepidation, have thrown in the things as he found them? It has been said by counsel that Adams had Colt by the neck, but would that have produced the clash as of foils? There would have been a scuf-

fle,—a noise with the feet,—but nothing of this kind was heard, but a slight clash. What made the noise? The flashing of a percussion cap would do it, and the introduction of a few grains of powder, even by the most favorable testimony for the prisoner, would have driven a pistol ball through the hat and skull. Had a quarrel taken place, as pretended, noise would not only have been made, but Colt would have been more likely, unless bent upon murder, to strike with a chair than a hatchet; and, even if he had done the latter, a high-minded man would have at once exclaimed to those around him, "I have struck a blow which I shall regret all my life," —and have shown contrition for the act. Had the quarrel taken place as said, would the words "you lie" have been made in a low voice? Would it not have been heard? That man, there is no doubt, was struck down by the first blow. Where was the neckcloth? Had it been a common stock it would have been twisted. Caroline Henshaw had given evidence that he had neckscarfs and stocks, but why was not the one worn presented? Had Adams been pressing Colt by the neck, the marks would have been left, and what man refuses to show such to his bosom friend? We hear of a trifling mark, but nothing such as would have appeared there. We hear of Caroline Henshaw going to his bedside; she asked him, as Portia did Brutus, when he came from the Senate House and committed a murder, what ailed him? He pushed her away, and she dared not, after that, ask this kind friend to see the marks on his neck—she dared not speak. Tell me if a man takes to his arms one who gives herself up to his embraces, one who yields herself to him to her destruction here and forever, is entitled to more feeling than if honorably engaged to her. God forbid I should say anything against that witness, she was about to become a mother, and if there was any one who would pray for that man, that he might be blessed forever, and would come here to testify for him it would be her. She approached his bed, he threw her from him. She knew she was not his wife, and dared not press it. Had she been his wife, she would have persisted.

But do not blame her, do not blame that slight girl, blame the one whose heart was such that he could seduce her, and keep her in abjection. Had she been his wife, he could have poured his sorrows into her ear; she would have clung by him; she would have gone with him to his prison; she would have accompanied him even to the gallows. Let this be a warning to women, let them learn not to put their earthly and eternal happiness in the keeping of such a man as that. That poor unfortunate girl must go down to the grave with the stain that is upon her. Caroline Henshaw, according to her testimony, had gone to bed, not dreaming that he would come home steeped in guilt. He had on his night-shirt when she first saw him, and it was said it was then eleven o'clock. By that time he must have gone systematically to work, prepared his victim, boxed him up, had the box ready to ship, the blood washed up, and everything done so coolly as to show it had been previously planned. We contend that this murder had been premeditated. Does the law require it shall have been a long time before? No, not even a single minute, if the intention is to produce death, and the blow is unnecessarily produced. If the *Kalamazoo* had sailed, would there have been any evidence of Colt's guilt, would suspicion even dare to be attached to him? The night after, the boy, in shutting up his store, heard the noise as if of nailing. How did Colt know the *Kalamazoo* was up? The box was directed to New Orleans that very night,—was this accident? He might have shown where he got the nails, but the counsel said there was but a pennyworth; but even then straws show which way the wind blows, and even this small quantity might have shown the fact. As to the mark on the neck, it could easily have been made in moving the box down stairs. Counsel for the defence said if Colt had been guilty he would have sent to Caroline, when he had been arrested, to put away the watch; but the body had not been discovered then. He told Mr. Wheeler, at first, that he was not in the room, but afterwards contradicted himself. The vessel seemed to have been most providentially detained. Colt knew that, un-

less the body was found, there would be no need of sending to Caroline Henshaw. He was aware, on putting the box on board a ship, that poison would be created by the putrid atmosphere, and used salt to preserve it.

There is one error I made which I endeavored to correct. Who, except the guilty, is afraid of a human skull—as it was—battered in. The counsel wished to have it examined but only that physicians should do so, and in an adjoining room —but doctors are but men as others—and the Court, jury and others, had a right to examine for themselves. Complaint has been made that the bloody garments and the ring should be shown to Mrs. Adams, but could anybody else identify them; as to the body of poor Adams even the impress of his maker had been obliterated by the hand of violence; and without Mrs. Adams' testimony, gentlemen, would you believe that the body found in the box was that of Samuel Adams? Now, gentlemen, as to the pocket book. *Mr. Adams* had been in the habit of carrying one, and whether he had money or not we cannot say. Mr. Colt may have known it. It is also said of the watch that Colt had it before or that he would not be likely to plunder such an article. Had the vessel sailed, the watch might have been carried into the country, and would probably never again been heard of.

I have alluded to the principal points, and could speak two hours more on the subject, but shall be brief. I ask you to review the evidence, and mete out fair and ample justice to the prisoner. If favorable, it is for you to say so. A chain of circumstances has been presented in the case astonishing to think of. It is for you to weigh them and bring in your verdict of guilty or not guilty. If courts and juries refuse to do their duty, who will protect our houses from burning? If it is to be understood that prosecuting officers are to have the stiletto, who will protect the community, our streets will be washed in blood, our altars be desecrated. Gentlemen, I have endeavored to do my duty. If I have been too warm, appreciate it. But, as regards the excuse of the prisoner, if the memorials of the mother and sisters had been pressed

closer to his heart, it would have been better for him. I believe that life was taken by John C. Colt. I believe if, by laying down his own life he could restore that man to his family he would gladly do it. I believe he would gladly give his life, but is that an excuse for taking the life of Adams? It is for us to do our duty—there is on that bench a Judge whose heart is alive to every kind feeling. If mercy is deserved it will be shown; but you have a simple duty to perform. I have endeavored faithfully to do mine. If erroneous, correct it; deal leniently and mercifully with the prisoner; do justly to yourselves. There are in this city three hundred thousand souls committed to our care, and much rests upon us. Act in a manner that you can answer to your consciences hereafter; deal justly, but deal firmly and honestly between the people and the prisoner.

JUDGE KENT. Gentlemen, it becomes us to close the last scene. My remarks shall afford you some time for deliberation, and do away with the excitement thrown around the case by the speeches of counsel. My duty will soon be done and yours begin. Some allusion has been made to the excitement out of doors. I am inclined to believe it is over rated. Had I not thought so, I would have postponed the trial. It would have been strange if, in the city of New York, the public mind would not have been shocked by the murder, but I have no doubt that every justice has been done to the prisoner. The Court has kept everything uninfluenced by contamination from without, and I have no doubt but reliance can be had upon the sound heads before us. I was sorry to find some acerbity of feeling shown among the counsel, but I see no occasion for it. Never have I known more talent or industry displayed than in this cause. No blame is deserved on either side, and as to the District Attorney he has discharged his duty ably and eloquently, and without any feeling but that of his duty.

It is now my place to address to you a few remarks. The degrees of homicides are four—justifiable and excusable homicide, murder and manslaughter. There is very little differ-

ence between the grades of the two former—the one is where an officer kills another in the performance of his duty—the other to prevent an attempt to kill where a man is allowed to defend himself even in taking life. If you think Colt killed Adams to protect himself from an attempt at murder or felony he is justified. It is also justifiable when a design is evident to inflict some great felony, such as to maim or murder, as where a man raises a large bar of iron to strike another. If you think this to have been the case, no blame is attached to the prisoner. We now come to the grade where the law says blame is deserved, but where there are mitigating circumstances—such as correcting a servant and death ensues, or a person in building lets fall a brick, and some person is killed—or where there has been some unexpected combat without dangerous weapons, and where it was not intended to take life. Words do not authorize one man to kill another, but where in resisting an assault death ensues, and it is not intended to kill, nor done in a cruel manner, it is excusable homicide. If not justifiable or excusable, it is a murder or manslaughter. In the former there are no shades; in the latter four degrees. The first is premeditation, and where it is done with an instrument regardless of life. Where a person discharges a loaded pistol into a crowd, it shows a depraved mind, and where he takes life, it is murder. As to premeditation, I differ from the District Attorney as to a point of law. It was said that if a homicide was committed the law implies malice, such as the case where a black man cut a woman's throat in Broadway, but I cannot agree with that doctrine. You may say that Colt designed to take Adams' life, if so it was murder. But you must show premeditation. This is not necessary to have been previous to Adams going into his room. If you think he did it, not in hot blood, or in a fracas, it is murder. But if you do not think such, it is manslaughter, and you must bring it within one of the grades. The first is, if a boy throws a stone at another, and kills him, or if a man kills another in a fight previously intended. If Colt intended to beat Adams and killed him, it is manslaugh-

ter in the first degree, but if in the heat of passion he did so, it is in the second degree. The third degree is where it is done without the use of a dangerous weapon.

The first question is, was the offence committed? This has been admitted. What degree of crime does it come under? The counsel has placed out of view much that was the object of several days' inquiry. The pistol idea is settled, and not necessary to touch upon. It was well to produce the skull. It became necessary on account of the physicians not being clear in their testimony. I was averse to producing it and harrowing up the feelings of the prisoner himself, and the relatives of the deceased, but it was necessary. In regard to Colt's confession, it is difficult to exclude it. The counsel introduced it in his argument, and it was irregular. It is in, however, but it is not testimony, and you (the jury) are bound to throw it out entirely so far as it goes to exculpate the prisoner. After all the testimony that has been presented, the case lies in a nut shell. Except so far as illustrating the character of John C. Colt, the mass of evidence goes but little way beyond the admitted murder. The pistol idea has not been given up by the District-Attorney, but you have the opinion of Dr. Gilman that he did not believe in it, although it had been his first impression; and Drs. Mott and Rogers declare it not to have been. You must discard the idea that the wound was given by the pistol. In regard to the watch, it has also been admitted to have been taken.

The question then is as to murder or manslaughter. I shall now look at the homicide and the subsequent proceedings. In regard to the latter, they are of importance in judging of the character of John C. Colt, and throwing a reflective light upon his character. Dismissing his own statement, and what do we find? The chain of facts are remarkable, and show him to be an uncommon man. The homicide occurred at half past three o'clock. Mr. Wheeler went to the door, then upstairs, told all he met, and yet Colt gave no signs of life or emotion. After nine o'clock Delnous heard him go downstairs, return, wash up the floor, and next morning heard the

sawing. Next day, we have the testimony of Mrs. Octon, to show that he came in, passed his door, and sat down by Mr. Wheeler's. It is a trait of character in his favor. He did not care to see his victim. Like Macbeth, he appears to have said, "I'm afraid to flee from what I've done; look on it, I dare not." Then again we see the body placed in a box, and packed up in a manner unparalleled in crime. He goes out to get a carman, assumes a careless air, and told the carman to convey the box to a New Orleans vessel. Almost any other man would have gone on that box and kept by it till it was safe; but he entrusted the carman to knock it around and throw it down as an ordinary package. He then gets a receipt, tears it up, returns to his office, and obliterates the marks. On Monday he assumes a gay air; he went to Adams' office, and also to Wells'. It shows him a man of intrepidity and coolness, such as rarely can be met with. Such is the impression on my mind, but you can judge of it. In regard to the idea of salt, I do not look upon it in any other light than that of additional foresight. Using the salt in order to preserve the body, was to guard against discovery, but it showed no greater atrocity. Whether the salt was there or not, it made no difference. It is not fully proved—the witnesses say they are not certain. The warmth shown by counsel was unnecessary. The thought might have an effect in inflaming the public mind, but as regards the fact, it only shows, if true, the foresight and providence of John C. Colt. We now come to the point of Samuel Adams being in the room. The witnesses we have are Wheeler and Seignette. Is there proof of design, anterior to his entering the room, that Colt intended to kill him? Colt was, perhaps, in want of money. At any rate Mr. Wheeler had asked him for his rent, and he could not pay. He was also desirous of sending off the books, so as to raise money. The District Attorney thinks the fact of the saw important. The evidence is conclusive that he borrowed one, but the circumstance is too light to say much, unless coupled with something else. The stuffing of the box with paper seems to have some weight about it,

but you will judge of the fact. Then, again, his having the window shut may look like preparation. These two points are all I see that look like preparatory design. Had Mr. Wheeler tried the door and found it locked, it might have been an important circumstance; but Mr. Wheeler did not try the door, and you must not look at it. Was the mere fact of Adams being in the room sufficient to fasten crime? The hatchet appears to have been in Colt's possession two months, and the box so for a long time anterior. The awning is said to have been taken from Murray street some time before, and this seems to have been the case. The inference is in favor of the prisoner. The box, the hatchet and the awning, were in his possession. The place in which parties were, seems to be inconsistent with the idea of premeditation. In that small room, and at that time of day it is difficult to suppose that there had been a premeditated design to take life.

Now as to the occurrence itself. We must look again at the conduct evinced by Colt in packing up the body. Does this show an evidence of guilt? The law gives concealment as evidence of guilt. Is any deduction necessarily drawn from the fact, but his desire to avoid punishment? Does this show that John C. Colt wished to avoid the State's Prison, which the law provides as the punishment of manslaughter? It may have been accompanied by guilt, but is any other idea apparent? The public mind was shocked, and every one felt it, and you may have imbibed the idea. The concealment was as likely to have been caused by a wish to avoid the punishment of manslaughter as well as of murder. We have the evidence of Mr. Wheeler and others. Mr. Wheeler acted precisely as a prudent man should have acted, it was so improbable that at noon day a murder had been effected that Mr. Wheeler may have been pardoned for not pushing his inquiries further than he did. The philosophy of evidence is, that persons agree on subjects, if their attention is drawn to the same object, but two persons in looking at a landscape, one may observe something that will escape the notice of the other. There is some little discrepancy as to who first went to the

police, and other small points, but it is certain that they heard a noise and the fall of a heavy body—on that they speak positively. He heard the clashing of foils, something like a movement of feet, and a fall, but nothing beyond. It does not follow that they could hear the beginning of this controversy; ordinary conversation could not probably have been heard; their attention was first called to the falling of a heavy body. Now as to the wounds themselves. We hear of a clash and the fall. After the most deep inquiry I am at a loss to account for the manner in which the wounds were inflicted; it is a matter for you to solve, not me. The wounds must have been given before the fall on the floor, as no noise was heard afterwards; but whether while deceased was standing, or from before or from behind, the jury must weigh. Dr. Mott and the others do not appear to agree, and the chain seems broken. Dr. Gilman speaks of two pieces being hacked off the back of his head, but it may have been done, he said, while putting it in the box, but this is not satisfactory to my mind. Whether the blow was struck from behind, may or may not have been the case. There is mystery; how these wounds were given is a subject of strong inquiry. The first wound appears to have created insensibility—if it had not been so, the piercing cry in the accent of fear would probably have arose over everything else. That there was a fracas appears evident from the nature of the case, and also from the testimony of Caroline Henshaw. That testimony appears to be worthy of confidence. That interesting young woman comes here under adverse circumstances. Her manner was childlike, she did not appear desirous of pushing her remarks, and the impression on my mind was decidedly in her favor. She stated that the mark was no larger than a sixpence, and she spoke with much caution. I believe her story, but the jury can weigh the fact. Does it then imply a fracas? Octon said he saw Colt take the box down stairs, and press his neck against it as it went down stairs. I believe Octon, and particularly as he said he was afraid of that box. His suspicion was awakened, and if you look at the statement of Colt, still

Octon's testimony is deserving, even if Colt's was admissible, of the greatest weight. The weight of the box accounts for the stiffening in his limbs, but the mark on the neck seemed like a pinch or grasp by the hand. Was the case murder?

You have heard the evidence. The desire of revenge is a prominent trait. A savage has been known to kill another to see how he would fall from his horse. It is hard to know the feelings that enter into the heart of a guilty man. But it is for the jury to think if there was any adequate motive. There appears to be no desire to preserve reputation, as Adams knew nothing against Colt, nor was there any old grudge; avarice may have entered his mind; his books were going to Philadelphia, and he might have got possession of the money though not be free from the debt, by Adams being put out of the way. It is possible he may have done it for the sake of his money, but we have no evidence that Adams had any about him. It had been stated that he carried a pocketbook,, but there was no evidence. He had a watch in his possession, that is certain and fully proved. Cary's testimony, that he saw a watch on a former day in Colt's hands appears to be insufficient. The watch was in Colt's possession. Suppose he killed him in an affray, what was he to do with the watch? Persons have been known to kill another for feeling; Colt may have been governed by such, but was it probable? Adams lay dead at his feet, and the possession of the watch is not inconsistent with the idea that he kept it some day to give it to his family. There appears to have been no grudge —very little motive for lucre, for the probability is that he would have selected a richer man.

The firm manner in which he walked on a precipice, one false step on which would have been fatal, the coolness of character he displayed, if you think these sufficient to believe him capable of premeditation, bring him in guilty of murder; if you do not think they show premeditation, he is not guilty of murder, but of manslaughter. As to the latter, we have the character of the slayer and the slain; the evidence is favorable to both. Adams was shown to have been amiable;

nevertheless, he was capable, as appeared by three witnesses, of using language of an insulting character, but nothing seems like his having ever been engaged in an affray in his life. As to Colt, also, he has been shown to be kind, pleasing and elegant in his address, yet we have evidence that he was disposed to show temper—the testimony of the man with the saw, Mr. Wheeler, and the case where he had become responsible for a debt. Mildness is sometimes shown by the sternest character, but Colt has exhibited nothing improper. Now as to his taking life, and his liability to the charge of manslaughter, the certainty that Adams was capable of showing temper, was sufficient to convey an idea that he might have come upon Colt when in a feverish state of mind, and a fracas occurred between them. But I leave it with you, give the doubts for the prisoner, give the lowest degree of punishment to which you feel the case belongs. Let it be a doubt fully formed. But I leave it with you, feeling the utmost confidence in you. Do justice whatever may ensue. You are bound to spurn all excitements—must not cherish a mawkish sympathy—examine the subject coolly, bring in a verdict according to what you really believe, and do your duty to the prisoner, your country, and your God.

Mr. Emmett asked that the Judge instruct the jury that the case would be excusable homicide unless the prisoner was armed with a hatchet at the commencement of the affray, or had prepared it before hand. It was so allowed.

The jury then retired.

January 24.

This morning (Sunday), at a quarter before three o'clock, the jury sent word that they had come to an agreement. At four o'clock the Judge, in company with Aldermen Purdy and Lee, took his seat upon the Bench.

The jury came into court.

The *Clerk.* Gentlemen, what is your verdict?

The *Foreman.* We find the prisoner, John C. Colt, guilty of wilful murder.

Mr. Morrill then applied to the Court for time to prepare a bill of exceptions, etc. The application was granted, the prisoner remanded to the custody of the Sheriff..

May 5.

The prisoner's counsel moved for a new trial, *Mr. Emmett* arguing the case for the prisoner and *Mr. Whiting* for the People. On May 12th a new trial was denied. The appeal was taken to the Supreme Court on July 16th at Utica. The case was argued before that tribunal, and the judgment approved.

September 27.

The prisoner was brought up to receive sentence, the court room being crowded with spectators. Asked if he had anything to say why sentence of death should not be passed on him, Colt handed a paper to the Judge, which contained charges that the trial had been unjustly conducted and that the evidence had been trampled on by the jury.

JUDGE KENT. I am sorry that any unjust allusions have been made as to the conduct of the jury. It is due to justice, and it is due to one of the most intelligent juries that ever sat in a court of justice, that I should not allow them, in this, their proud tribunal, to be insulted, without entering a solemn protest against it. The jury were selected out of three hundred of our most respectable citizens—taken indiscriminately from the city, selected under the most vigorous exercise of the peremptory challenge by the prisoner—and in every instance where objections were raised and allowed, it was in favor of the prisoner. Their demeanor in Court was such as to entitle them to the highest consideration of the tribunal in which they took part. They had been separated from their families and from their business, confined in a sort of prison for eleven days, and I never saw one of them exhibit the slightest impatience. On the contrary, they bore, with most exemplary patience, the tedious, even unnecessary, delays in the progress of the trial. Calmly, honestly, unfalteringly earnest in their efforts to discover the truth from the mass of

evidence spread before them. Had these men been followed to their rooms, we would have seen the same calm, unimpassioned inquiry characterizing their deliberations. As far, therefore, as the paper expressed dissatisfaction with the conduct of the Court and jury, it was the Court's conscientious opinion that the asseverations are untrue and unjust. I will now allude to the offence for which the prisoner has been convicted. No man ever doubted that it was a crime of the greatest magnitude and enormity. It was a crime, too, which had sunk deep in the community. Leaving out of view all the appalling circumstances, with which I will not distress the prisoner or myself in recalling, no doubt could exist but that the deed was executed under the influence of ferocious passions and sanguinary cruelty.

Colt said that if the Judge had read the document he would find that he (Colt) did not charge the jury with wilful wrong, but that they were mistaken. As to any illusions made by the Judge, he could assure him that he would rather leave his case with God than with man. He never did a deed in his life but he would repeat, had it to be gone over again. "I am not the man to be trampled down in my own office, and look tamely on. It was not my intention to kill the man; but he made the assault, and must take the consequences. I am sorry the Court thought proper to make the remarks it has. For myself, I had intended to say something more; but, not expecting to be sentenced to-day, I was not prepared. I am ready to receive sentence, knowing that it cannot be avoided."

JUDGE KENT. Sentence will now be pronounced, with expressions of deep regret entertained by the Court at the callous and morbid insensibility exhibited in your last speech, and which shows that any further remarks would be lost. John C. Colt, the sentence of the Court is, that on the 18th of November next you will be hanged till you are dead, and may God have mercy on your soul.

The prisoner was then removed. During the sentence he assumed a bold and careless air.

HIS SUICIDE

From the date of Colt's sentence up to the day set down for his execution the most energetic efforts were made upon the part of his friends to have the death penalty commuted to imprisonment for life. But the Governor could not be moved. Application was also made to the Chancellor to have the case removed to the Court of Errors, but the application was denied.

Several attempts were now made to release the prisoner from jail. One evening one of his friends went to the Tombs attired in women's clothes, the plot being matured to let the prisoner walk out of the Tombs in the female costume, while the latter should remain in his place. Rooms were prepared in Brooklyn for the reception of Colt, and every arrangement made so that he should be hidden when he again emerged into freedom. But the plot was discovered. On the party arriving at the Tombs and applying for admission they were informed that their conspiracy was well known, and they were advised to withdraw, and nothing would be said about the movement. A doctor of the city undertook to resuscitate Colt after he was hanged, in case the body was not too long suspended. This doctor asserted that Colt's neck was of such thickness that it would require a longer period than is usual in such cases before the unfortunate man would be strangled. A room was taken at the Shakespeare Hotel, where the body was to be brought direct from the Tombs, and there all efforts made for its resuscitation.

Caroline Henshaw was faithful to the last and visited him daily and on the morning of the day set for his execution, Colt married her in his cell.

At one o'clock Caroline Henshaw—the execution was set for four—took leave of the unfortunate man. Deputy-Sheriff Hillyer shortly after entered the cell, and bade Colt farewell. He was the last man that saw him alive. A few minutes before four o'clock Sheriff Hart, Deputy Sheriff Westervelt, and Rev. Dr. Anthon proceeded to the cell in order

to inform Colt that his hour had come. On opening the cell door the visitors started back in horror. Lying at full length upon his couch was John C. Colt, a corpse. A small clasp-knife, with the handle slightly broken, was stuck in his heart. The body was still warm, but the spirit had departed.

Just then a cry of fire was heard. The cupola of the Tombs was found to be in flames.

The body was removed by the friends of the deceased and placed in the vaults of St. Mark's Church.

It was widely asserted that Colt had not committed suicide at all, and that the setting fire to the Tombs was simply a *ruse* in order to facilitate the escape of the prisoner[7] and that he had escaped. But these were subsequently authoratively shown to be false.

[7] An interesting account of the circumstances anterior to and succeeding the suicide of Colt, was subsequently written by Mr. L. Gaylord Clarke, as follows:

I have no doubt that hundreds and hundreds of people, in this State, and in border States, are at this moment in the full and undoubting belief that John C. Colt, who took the life of Adams in 1842, is still in existence!—that he never entirely "killed himself," but that he was "spirited away" from the triple-barred and triple-guarded "strong immures" of the Tombs, and is now in a foreign land, safe from further peril! Why, not two months since, I heard a magistrate from one of the lower counties of New Jersey say—a man accustomed to deliberate, and carefully weigh evidence, that "he has no more doubt that John C. Colt was among the living, than he was that he himself was alive!"—and I have heard at least fifty persons affirm the same thing. Few persons took a deeper interest in the case of Colt, from the very beginning, than myself. Firmly believing that the killing was never premeditated, but was the result of a quarrel and a blow suddenly given, when the parties stood face to face, with each other (and this was shown by the cast of the head, showing the mark made by the hatchet, which Dr. Rogers and a committee, of which I was one, took up to Albany, and laid before Governor Seward) I say, firmly believing all this, I never could consider Colt a deliberate murderer. Nor was he. He was convicted for concealing the body of his unfortunate victim. Does any one suppose that if Colt had rushed out into the hall, after having struck the fatal blow, and said, "I have killed a man!—we have had a little difficulty—I have struck him with a hatchet, and have killed him!" does any one now believe he would ever have been convicted? Never! But this apart.

I believe I am the only survivor of those who left John C. Colt in his cell at the Tombs, in company alone with his brother Samuel,

some three quarters of an hour before the time appointed for the execution. The late Rev. Mr. Anthon, John Howard Payne, Samuel Colt, the unhappy condemned, and myself were the only persons in the cell at this time. It was a scene never to be forgotten. The condemned had on a sad colored morning-gown, and a scarf tied loosely arouhd his neck. He had a cup of coffee in his hand, and was helping himself to some sugar from a wooden bowl, which stood on an iron water-pipe near the head of his bed. His hand was perfectly steady, as he held the cup and put in the sugar; and the only sign of intense internal agitation and excitement was visible in his eyes, which were literally blood red, and oscillated, so to speak, exactly like the red and incessantly-moving eyes of the Albinoes. Our interview was prolonged for half an hour, which was passed in conversation with Dr. Anthon, Mr. Payne, and his brother. And when we were about to depart, and some one, looking at his watch, said that he thought he must be some ten minutes fast, poor John replied, "May you never see the time when those ten minutes will be as precious to you as they are to me! But, after all, we have all got to go sooner or later—and no man knows when!" As we closed the cell door, leaving him alone with his sorrowing, faithful brother, the unhappy man kissed us all on each cheek, and bade us "Farewell!" with emotion, too deep for tears—for not a drop moistened his throbbing, burning eyes.

We made our way with difficulty from the Tombs, by the aid of the surrounding police, who opened a space for our carriage through the crowd, which, in every direction, for two or three blocks, filled the adjacent streets, and reached, on Franklin street, nearly if not quite to Broadway.

I resided at that time in Seventh street, between Eighth and Ninth avenues, and Rev. Dr. Anthon lived in St. Mark's Place, in Eighth street. We deposited the good doctor at his door, and after calling at the same time to acquaint the family with the last sad scene we had witnessed, Mr. Payne and I were driven quickly over to the New York University, in the southern tower of which, in the upper story, Mr. Samuel Colt had his incipient pistol-manufactory, or rather his Invention and Improvement Office. As we entered, he was sitting at a table, with a broad-brimmed hat drawn over his brow, his hands spread before his eyes, and the hot tears trickling through his fingers. After a few moments' silence, at his request, I took a sheet of paper, and commenced, at his dictation a letter to his brother, Judge Colt, then of St. Louis. I had not written more than five lines, when rapid footsteps were heard on the stairs, and a hackman rushed into the room, exclaiming in the wildest excitement: "Mr. Colt! Mr. Colt! your brother has killed himself—stabbed himself to the heart! And the Tombs are a-fire! You can see it a burning now!" "Thank God! thank God!" exclaimed Mr. Colt, with an expression almost of joy.

We raised an eastern window of the tower, stepped out upon the battlement, and by a short ladder, stepped out on to the roof of the chapel, or main edifice, and saw the flames licking up and curling around the great fire tower of the Tombs.

There was something peculiar about the air—the atmosphere—on that day. One felt as one feels on a cold autumnal night, while watching, uncovered in the open air, the flickering of the aurora borealis in the northern sky. As early as half past three o'clock that afternoon, two stars were distinctly visible through the cold thin atmosphere. This was regarded at the time as a remarkable phenomenon.

Now everybody knows, or should know, that the body of John C. Colt was found exactly as described by the hackman; that life was totally extinct; that the corpse was encoffined, removed, buried, and "so remains unto this day."

The Tombs tower caught fire from an over-heated stove; and yet, all the doubters of Colt's suicide, whom we have ever met, contend that the burning was part of the plan; that it was hired to be set on fire, and that in the confusion the condemned man escaped.

THE TRIALS OF BRIDGET BISHOP AND GEORGE BURROUGHS FOR WITCHCRAFT, SALEM, MASSACHUSETTS, 1692.

THE NARRATIVE

Witchcraft (the acquiring of supernatural power by a compact with evil spirits) was until somewhat recent times believed in implicity by all the common people, and by many of the learned. Several papal bills have been issued against it and thousands of persons suffered death on account of it down to the seventeenth century. Henry VIII, Elizabeth and James I thundered against it; even the great Bacon supported laws against it, and in 1665 Sir Matthew Hale, one of the grandest names on the roll of English Judges, and whose genius, learning and purity of character have never been questioned, tried and sentenced two women to die for this offense. The last victim in England perished in 1716 and the last in Scotland in 1722.

The Puritan Colonists of New England carried with them, in an exaggerated form, the superstitious feelings with regard to witchcraft which then prevailed in the mother country. In the spring of 1692 an alarm of witchcraft was raised in the family of the minister of Salem, and some black servants were charged with the supposed crime. Once started, the alarm spread rapidly, and in a very short time a great number of people fell under suspicion, and many were thrown into prison on very frivolous grounds, supported, as such charges usually were, by very unworthy witnesses. The new Governor of the colony, Sir William Phipps, arrived from England in the middle of May, and he seems to have been carried away by the excitement, and authorized judicial prosecutions. The trials began at the commencement of

June; and the first victim, a woman named Bridget Bishop was hanged.

A few weeks later George Burroughs, a minister of the gospel whose chief crime seems to have been a disbelief in witchcraft itself, was tried and executed. His fate aroused much sympathy which was, however, checked by Cotton Mather who was present at the place of execution on horseback and addressed the crowd assuring them that Burroughs was an imposter and was guilty.

Many people, however, had now become alarmed at the proceedings of the prosecutors, and among those executed with Burroughs was a man named John Williard, who had been employed to arrest the persons charged by the accusers, and who had been accused himself, because, from conscientious motives, he refused to arrest any more. He attempted to save himself by flight, but he was pursued and overtaken. Eight more of the unfortunate victims of this delusion were hanged on the 22nd of September, making in all nineteen who had suffered thus far, besides one who, in accordance with the old criminal law practice, had been pressed to death for refusing to plead. The excitement had indeed risen to such a pitch that two dogs accused of witchcraft were put to death.

A certain degree of reaction, however, appeared to be taking place, and the magistrates who had conducted the proceedings began to be alarmed, and to have some doubts of the wisdom of their proceedings. Cotton Mather was called upon by the Governor to employ his pen in justifying what had been done; and the result was the book, "The Wonders of the Invisible World," in which the author gives an account of seven trials at Salem, compares the doings of the witches in New England with those in other parts of the world, and adds an elaborate dissertation on witchcraft in general. This book was published at Boston, Massachusetts, in the month of October, 1692. Other circumstances, however, contributed to throw discredit on the proceedings of the court, though the witch *mania* was at the same time spreading throughout the whole colony. In this same month of October, the wife of Mr. Hale, minister

of Beverley, was accused, although no person of sense and respectability had the slightest doubt of her innocence; and her husband had been a zealous promoter of the prosecutions. This accusation brought a new light on the mind of Mr. Hale, who became convinced of the injustice in which he had been made an accomplice; but the other ministers who took the lead in the proceedings were less willing to believe in their own error; and equally convinced of the innocence of Mrs. Hale, they raised a question of conscience, whether the devil could not assume the shape of an innocent and pious person, as well as of a wicked person, for the purpose of afflicting his victims. The assistance of Increase Mather, the president or principal of Harvard College, was now called in, and he published the book, "A Further Account of the Tryals of the New England Witches . . . To which is added Cases of Conscience concerning Witchcrafts and Evil Spirits personating Men." The greater part of the "Cases of Conscience" is given to the discussion of the question just alluded to, which Increase Mather unhesitatingly decides in the affirmative.

The scene of agitation was now removed from Salem to Andover, where a great number of persons were accused of witchcraft and thrown into prison, until a justice of the peace named Bradstreet, to whom the accusers applied for warrants, refused to grant any more. Hereupon they cried out upon Bradstreet, and declared that he had killed nine persons by means of witchcraft; and he was so much alarmed that he fled from the place. The accusers aimed at people in higher positions in society, until at last they had the audacity to cry out upon the lady of Governor Phipps himself, and thus lost whatever countenance he had given to their proceedings out of respect to the two Mathers. Other people of character, when they were attacked by the accusers, took energetic measures in self-defence. A gentleman of Boston, "when cried out upon," obtained a writ of arrest against his accusers on a charge of defamation, and laid the damages at a thousand pounds. The accusers themselves

now took fright, and many who had made confessions retracted them, while the accusations themselves fell into discredit. When Governor Phipps was recalled in April, 1693, and left for England, the witchcraft agitation had nearly subsided, and people in general had become convinced of their error and lamented it.

But Cotton Mather and his father persisted obstinately in the opinions they had published, and looked upon the reactionary feeling as a triumph of Satan and his kingdom. In the course of the year they had an opportunity of reasserting their belief in the doings of the witches of Salem. A girl of Boston, named Margaret Rule, was seized with convulsions, in the course of which she pretended to see the "shapes" of spectres of people exactly as they were alleged to have been seen by the witch-accusers at Salem and Andover. This occurred on the 10th of September, 1693; and she was immediately visited by Cotton Mather, who examined her, and declared his conviction of the truth of her statements. Had it depended only upon him, a new and no doubt equally bitter persecution of witches would have been raised in Boston; but an influential merchant in that town, named Robert Calef, took the matter up in a different spirit, and also examined Margaret Rule, and satisfied himself that the whole was a delusion or imposture. Calef wrote a rational account of the events of these two years, 1692 and 1693, exposing the delusion, and controverting the opinions of the two Mathers on the subject of witchcraft which was published under the title of "More Wonders of the Invisible World, or the Wonders of the Invisible World Displayed in Five Parts. An account of the sufferings of Margaret Rule collected by Robert Calef, merchant of Boston in New England." The partisans of the Mathers displayed their hostility to this book by publicly burning it; and the Mathers themselves kept up the feeling so strongly that years afterwards, when Samuel Mather, the son of Cotton, wrote his father's life, he said sneeringly of Calef: "There was a certain disbeliever in Witchcraft who wrote against this book (his father's 'Won-

ders of the Invisible World') but as this man is dead, his book died long before him." Calef died in 1720.

The witchcraft delusion had, however, been sufficiently dispelled to prevent the recurrence of any other such persecutions; and those who still insisted on their truth were restrained to the comparatively harmless publication and defence of their opinions. The people of Salem were humbled and repentant. They deserted their minister, Mr. Paris, with whom the persecution had begun, and were not satisfied until they had driven him away from the place. Their remorse continued through several years, and most of the people concerned in the judicial proceedings proclaimed their regret. The jurors signed a paper expressing their repentance, and pleading that they had labored under a delusion. What ought to have been considered still more conclusive, many of those who had confessed themselves witches, and had been instumental in accusing others, retracted all they had said, and confessed that they had acted under the influence of terror. Yet the vanity of superior intelligence and knowledge was so great in the two Mathers that they resisted all conviction. In his Magnalia, an ecclesiastical history of New England, published in 1700, Cotton Mather repeats his original view of the doings of Satan in Salem, showing no regret for the part he had taken in this affair, and making no retraction of any of his opinions. Still later, in 1723, he repeats them again in the same strain in the chapter of the "Remarkables" of his father entitled "Troubles from the Invisible World." His father, Increase Mather, had died in that same year at an advanced age, being in his eighty-fifth year. Cotton Mather died on the 13th of February, 1728.

The general course of proceedings at these trials was entirely consistent with the character of the court and the nature of their business. After pleading to the indictment, if the prisoner denied his guilt, the afflicted persons were first brought into court and sworn as to who afflicted them. Then the confessors, that is, those who had voluntarily acknowledged themselves witches, were called upon to tell what they knew

of the accused, "a thing," said Brattle, who wrote at this time, "which I believe was never heard of in this world, that such as confess themselves to be witches, to have renounced God and Christ, and all that is sacred, should be allowed and ordered to swear by the name of the great God!" Proclamation was then made for all who could give any testimony, however foreign to the charge, to come into court, and whatever any one volunteered to tell was admitted as evidence. The next process was to search for "witch marks," the doctrine being that the devil affixed his mark to those in alliance with him, and that this point on the body became callous and dead. This duty was performed by a jury of the same sex, who made a particular return of the appearance of the body, and whether there was any preternatural excrescence. A wart or a mole on the body of a prisoner was often conclusive against him, when the evidence was otherwise doubtful. These examinations in the case of women were made by a jury of matrons, aided by a medical man as foreman. They were very minute, and, in some respects, the most cruel and disgusting part of the proceedings. The unhappy prisoners were not only subjected to the mortification of a gross exposure before the jury of examination, but when any witch mark was found, it was punctured with pins to ascertain whether there was any feeling. There were usually several examinations of the same individual. In one instance a woman was examined at 10 o'clock in the morning, and at 4 o'clock in the afternoon; the jury certified that they had again examined her, and that her breast, which "in the morning search appeared to us very full, the nibbles fresh and starting, now at this search all lancke and pendant." Of the nine women who were on this jury, but one could write her name; the remainder made their marks.

Evidence was also received respecting the appearance of the accused at the preliminary examinations; and the various signs of witchcraft which then appeared were detailed with much more particularity. It was a great sign of witchcraft to make an error in the Lord's prayer, which the accused on

those occasions were required to repeat, and if they made a single error, it was brought up at their trial as evidence against them. Thus, one repeated the prayer correctly in every particular, excepting that she said "deliver us from all evil," which was looked upon "as if she prayed against what she was now justly under." Upon making another attempt, she said "hollowed be thy name," instead of "hallowed be thy name"; and this "was counted a depraving the words, as signifying to make void, and so a curse, rather than a prayer." The appearance of the accused, and of those supposed to be bewitched, also had an effect against the prisoner. Sometimes the witnesses were struck dumb for a long time; at others they would fall into terrible fits, and were insensible to the touch of all but the accused, who they declared tormented them. Sometimes the accused were ordered to look on the afflicted, when the latter would be immediately thrown into fits. It was thought that an invisible and impalpable fluid darted from the eyes of the witch and penetrated the brain of the bewitched. A touch by the witch attracted back the malignant fluid, and the sufferers recovered their senses. Another sign of witchcraft, of great consideration, was an inability of the accused to shed tears. On the trial of George Burroughs the evidence was of a very loose and general nature, consisting in a great measure of things said and done by his shape or apparition, when he was not present as to the body. Attempts were made in this way to prove that the prisoner had murdered two wives and other persons. Testimony was also received respecting great feats of strength performed by the prisoner. But what made against him very much was the appearance of the witnesses, when they gave their testimony. They fell into terrible fits and were struck dumb. "Who hinders these witnesses," said the chief justice, "from giving their testimony?" "I suppose the devil," answered Burroughs. "How comes the devil," retorted Stoughton, "so loath to have any testimony borne against you?" and the question was decisive against him. The fol-

lowing is the testimony of most of the witnesses at this trial, condensed from original documents.

There was one species of evidence which was of great effect in these persecutions and which it was impossible to rebut. Witnesses were allowed to testify to certain acts of the accused, when the latter were not present in the body; that they were tormented by apparitions or spectres of the accused which pinched them, robbed them of their goods, caused them to languish and pine away, pricked them; and they produced the identical pins which were used for their purpose.

The cases of Bridget Bishop and George Burroughs will illustrate these terrible trials; the others being in nearly every respect similiar, both in procedure, evidence and penalty.

THE TRIAL[1]

In the Special Court of Oyer and Terminer for the Counties of Suffolk, Essex and Middlesex, Salem, Massachusetts, 1692.[2]

[1] *Bibliography.* Chandler's American Criminal Trials. See ante, p. 116. The foundation of all reports of these Trials for Witchcraft must however be Cotton Mather's * "Wonders of the Invisible World," for the clergyman not only took an active part in the persecutions, but he was called upon by the governor of the Province to justify them, and in this book he defends the verdicts in the cases, and gives a full report of the most important of the trials. It was published at Boston in October, 1692, and called forth an able and effective reply from Robert Calef, a Boston Merchant. It has been reprinted in England * "The Wonders of the Invisible World Being an account of the Trials of Several Witches lately executed in New England. By Cotton Mather, D.D. To which is added a further account of the Trials of the New England Witches by Increase Mather, D.D., President of Harvard College. London, John Russell Smith, Soho Square, 1862."

[2] The jails of Essex and the neighboring counties were full and there had been no trials. In May the new charter and the Royal Governor, Sir Wm. Phipps, arrived in Boston. The latter a firm believer in witchcraft, finding the prisons filled with victims, charged with this offense, and urged on by the seeming emergency of the occasion, issued his special commission, constituting the persons named in it a Court to act in and for the Counties of Suffolk, Essex and Middlesex. This court was beyond all question an illegal tribunal because the Governor had no shadow of authority to constitute it. 1 Chandler American Cr. Tr. 92.

WILLIAM STOUGHTON,[3] *Chief Justice.*
NATHAN SALTONSTAL.
JONATHAN CURWIN.
JOHN RICHARDS.
BARTHOLOMEW GEDNEY.
WAIT WINTHROP.
SAMUEL SEWALL.
PETER SERGEANT.
} *Judges.*[4]

June 20.

Bridget Bishop or Oliver was indicted for that on April 19th and at divers other times and days as well before as after [5] she used, practiced and exercised certain detestable arts called witchcraft and sorceries at and within the township of Salem in upon and against one Mercy Lewis of Salem Village by which wicked arts the said Mercy Lewis was hurt, tortured, afflicted, wasted and tormented against the peace of our

[3] STOUGHTON, William (1631-1701). First Chief Justice of Massachusetts. Born in Dorchester. Graduated from Harvard College in 1655, went to England and became a fellow of Oxford and entered the ministry, returned to Massachusetts in 1662 and continued preaching though without a settled church. Agent of the Colony in England in 1677. President of Council of Massachusetts, 1686. Appointed by Sir William Phipps to try the witches in 1692. Later appointed Chief Justice. "He erected in his lifetime a building for the accommodation of the students of Harvard College which was taken down in 1780 being an unsubstantial piece of masonry. In 1806 a substantial brick building being erected by the corporation the name of Stoughton was given to it. He died at the age of seventy, greatly lamented, and was buried at Dorchester with great honor and solemnity and with much New England glory. A later epitaph records his virtues, his honors and his name, and still points out his grave in the ancient church yard of that ancient town. On no individual does the responsibility of the sad culmination of the witch excitement rest more heavily than on William Stoughton." 1 Chan. Am. Cr. Tr. 420.

[4] It was a popular tribunal; there was not a lawyer concerned in its proceedings. Stoughton and Sewall had been educated clergymen, Winthrop and Gedney were physicians. Richards was a merchant, Sergeant was an influential man in the colony, and Saltonstal who refused to proceed against those suspected of witchcraft was an educated man, graduated at Cambridge in 1659 and afterwards became distinguished as a military commander. Id. p. 92.

[5] Most of the charges were from five to twenty years old.

Sovereign Lord and Lady the King and Queen and against the form of the statute in that case made and prescribed. There were four other indictments against her for the same crime in afflicting persons. She pleaded not guilty.

Anthony Checkley[6] and *Thomas Newton* for the King.

WITNESSES FOR THE PROSECUTION

Deliverance Hobbs. Having confessed myself a witch, the spectre of the prisoner was now tormenting me on account of my confession and tempting me to sign the book again and to deny what I confessed. The shape of the prisoner whipped me with iron rods to compel me. This Bishop was at a general meeting of the witches, in a field at Salem village and there partook of a diabolical sacrament in bread and wine then administered.

John Cook. About five or six years ago, one morning about sunrise I was assaulted in my chamber by the shape of this prisoner which looked on me, grinned at me, and very much hurt me with a blow on the side of the head. On that same day about noon, the same shape walked into the room where I was and an apple strangely flew out of my hand, into the lap of mother, six or eight feet away.

Samuel Gray. About fourteen years ago I walked on a night, and saw the room where I lay full of light and then saw plainly a woman between the cradle and the bedside, which looked upon me. I rose and it vanished; though I found the doors all fast; looking out at the entry door I saw the same woman in the same garb again, and said, "In God's name, what do you come for?" I went to bed, and had the same woman assaulting me. The child in the cradle gave a great screech and the woman disappeared. It was long before the child could be quieted; and though it was a very likely, thriving child, yet from this time it pined away and after divers months died in a sad condition. I knew not Bishop, nor her name; but when I saw her after this I knew by her countenance and apparel and all circumstances, that it was the apparition of this Bishop, which had thus troubled me.

John Bly. Bought a sow of Edward Bishop, the husband of the prisoner, and was to pay the price agreed unto another person. Prisoner being angry that she was thus hindered from finger-

[6] Mr. Washburn in his Judicial History of Massachusetts, says that Anthony Checkley was the Attorney General at these trials; but Thomas Newton appears to have acted in that capacity at the first session of the court on June 2. Checkley's commission from Governor Phipps, is dated July 2. Among the papers relating to these trials at Salem, is one containing the form of oath administered to Newton as the prosecuting officer, concluding thus: "Salem, June 2, 1692. Thomas Newton took the oath aforesaid in open court, before me. Wm. Stoughton." It is probable that Checkley acted as prosecuting officer at the subsequent trials.

ing the money, quarrelled with me; soon after which the sow was taken with strange fits, jumping, leaping and knocking her head against the fence; she seemed blind and deaf, and would neither eat nor be sucked; whereupon a neighbor said, she believed the creature was overlooked; and sundry other circumstances concurred, which made me believe that Bishop had bewitched it.

Richard Cowan. Eight years ago, as I lay awake in bed, with a light burning in the room, I was annoyed with the apparition of the prisoner, and of two more that were strangers who came and oppressed me so that I could neither stir nor wake anyone else. The night after I was molested again in like manner. Bishop taking me by the throat and pulling me almost out of bed. My kinsman offered for this cause to lodge with me; and, that night as we were awake discoursing together I was once more visited by the guests which had formerly been so troublesome, my kinsman being at the same time struck speechless and unable to move hand or foot. I had laid his sword by me, which those unhappy spectres did strive much to wrest from me, but I held it too fast for them. I then grew able to call the people of the house; but although they heard me yet they had not power to speak or stir, until at last, one of the people crying out, "What is the matter?" the spectres all vanished.

Samuel Shattock. In the year 1680 this Bridget Bishop often came to my house upon such frivolous and foolish errands, that we suspected she came indeed with a purpose of mischief. Presently my eldest child, which was of as promising health and sense as any child of its age, began to droop exceedingly; and the oftener that Bishop came to the house, the worse the child grew. As the child would be standing at the door, he would be thrown and bruised against the stones, by an invisible hand, and in like sort knock his face against the sides of the house, and bruise it after a miserable manner. Afterwards, this Bishop would bring me things to dye, whereof I could not imagine any use; and when she paid me a piece of money, the purse and money were unaccountably conveyed out of a locked box and never seen more. The child was immediately hereupon taken with terrible fits, whereof my friends thought he would have died. He did almost nothing but cry and sleep for several months together and at length his understanding was utterly taken away. Among other symptoms of an enchantment upon him, one was, that there was a board in the garden whereupon he would walk; and all the invitations in the world could never fetch him off. About seventeen or eighteen ears after, there came a stranger to my house, who, seeing the child, said, "this poor child is bewitched; and you have a neighbor living not far off who is a witch." He added, "your neighbor has had a falling out with your wife and she said in her heart, your wife is a proud woman and she would bring down her pride in this child." I then remembered that Bishop had parted with my wife in muttering and menacing terms a little while before the child was taken ill. The aforesaid stranger

would needs carry the bewitched boy with him to Bishop's house on pretence of buying a pot of cider. The woman entertained him in a furious manner and flew also upon the boy, scratching his face till the blood came, and saying, "Thou rogue, what dost thou bring this fellow here to plague me?" Ever after, the boy was followed with grievous fits, which the doctors themselves generally ascribed unto witchcraft; and wherein he would be thrown still into the fire or water, if he were not constantly looked after; and I verily believe that Bishop was the cause of it.

John Louder. Upon some little controversy with Bishop about her fowls, going well to bed, I awoke in the night by moonlight and saw clearly the likeness of this woman grievously oppressing me in which miserable condition she held me unable to help myself, till near day. I told Bishop of this; but she utterly denied it, and threatened me very much. Quickly after this, being at home on Lord's day, with the doors shut about me I saw a black pig approach which endeavoring to kick, it vanished away. Immediately after, sitting down, I saw a black thing jump in at the window and come and stand before me. The body was like that of a monkey, the feet like a cock's, but the face much like a man's. I being so extremely affrightened that I could not speak, this monster spoke to me and said: "I am a messenger sent unto you, for I understand that you are in some trouble of mind, and if you will be ruled by me, you shall want for nothing in this world." Whereupon I endeavored to clap my hands upon it; but could feel no substance, and it jumped out of the window again; but immediately came in by the porch, though the doors were shut, and said, "You had better take my counsel." I then struck at it with a stick, but struck only the groundsel, and broke the stick. The arm with which I struck was presently disabled; and it vanished away. I presently went out at the back door, and spied this Bishop, in her orchard, going toward her house; but had not the power to set one foot forward unto her. Whereupon, returning into the house, I was immediately accosted by the monster I had seen before, which goblin was going to fly at me; whereat I cried out, "The whole armor of God be between you and me!" So it sprung back and flew over the apple tree, shaking many apples off the tree in its flying over. At its leap, it flung dirt with its feet against my stomach; whereon I was struck dumb, and so continued for three days together.[1]

William Stacy. Receiving money of this Bishop, for work done by me I was gone but a matter of three rods from her and looking for my money found it unaccountably gone. Some time after, Bishop asked whether my father would grind her grist for her? I demanded why? She replied, "Because folks count me a witch." I answered: "No question but he will grind it for you." Being then gone about

[1] "Upon the producing of this testimony," says Cotton Mather, "Bishop denied that she knew this deponent. Yet their two orchards joined, and they had often had their little quarrels for some years together."

six rods from her, with a load in my cart, suddenly the off wheel slumpt, and sunk down into an hole, upon plain ground, so that I was forced to get help for the recovering of the wheel. But stepping back to look for the hole which might give this disaster, there was none at all to be found. Some time after I was waked in the night; but it seemed as light as day and I perfectly saw the shape of this Bishop in the room, troubling me; but upon her going out, all was dark again. Charged Bishop afterwards with it, and she denied it not, but was very angry. Quickly after, having been threatened by Bishop, as I was in a dark night going to the barn I was very suddenly taken or lifted from the ground and thrown against a stone wall; after that I was again hoisted up and thrown down a bank at the end of my house. After this, again passing by this Bishop, my horse, with a small load, striving to draw, all the gears flew to pieces and the cart fell down and going then to lift a bag of corn, of about two bushels, I could not budge it with all my might. Many other pranks of this Bishop, I am ready to relate. I verily believe Bishop was the instrument of my daughter Priscilla's death.

William Bly. Being employed by Bridget Bishop to help take down the cellar wall of the old house wherein she formerly lived I did in holes of the old wall find several poppets, made of rags and hogs' bristles, with headless pins in them, the points being outward; "whereof the prisoner could give no account unto the court that was reasonable or tolerable."

An examination of the prisoner was made by a jury of women, who reported that they found a preternatural "tet" upon her body, and on making a second examination within three or four hours, there was no such thing to be seen.

The poor woman undertook to explain the circumstances which had been related against her, but she was constantly harassed; and, becoming confused, she apparently prevaricated somewhat, and all she said made against her. She seems to have been a woman of violent temper, who had long lived on ill terms with her neighbors, for many years, and who had long had the reputation of being a witch. Those of her neighbors, who had suffered from her uncomfortable disposition, were nothing loth to attribute all their misfortunes to her; and she thus stood little chance of a fair trial. She was convicted and sentenced to be hanged, and was remanded to prison to await her doom. "As she was under a guard, passing by the great and spacious meeting house of Salem," —Cotton Mather relates this—"she gave a look towards the

house; and immediately a demon, invisibly entering the meeting house, tore down a part of it; so that though there was no person to be seen there, yet the people at the noise running in found a board, which was strongly fastened with several nails, transported unto another quarter of the house."

She was executed on the tenth of June, solemnly protesting her innocence to the last.

August 5.

On this day the trial of George Burroughs took place. The indictment set forth, that the prisoner on the ninth day of May and divers other days, as well before as after, "certain detestable arts, called witchcraft and sorceries, wickedly and feloniously hath used, practiced, and exercised, at and within the township of Salem, in the county of Essex aforesaid, in, upon, and against one Anne Putnam, dinglewoman, by which wicked arts, the said Anne Putnam the ninth day of May, and divers other days and times, as well before as after, was and is tortured, afflicted, pined, consumed, wasted, and tormented, against the peace of our Sovereign Lord and Lady, the King and Queen, and against the form of the statute in that case made and provided." There were three other indictments against the prisoner, to all of which, on his arraignment, he pleaded not guilty.

WITNESSES FOR THE PROSECUTION

Anne Putnam. On ninth May, 1692, I saw the apparition of George Burroughs, who grievously tortured me, and urged me to write in his book, which I refused. He told me his two first wives would appear to me presently and tell me a great many lies, but I should not believe them. Immediately there appeared forms of two women in winding sheets and napkins about their heads, at which I was greatly affrighted. They turned their faces towards Mr. Burroughs and looked very red and angry at him, telling him that he had been a cruel man to them, and that their blood cried for vengeance against him, that they should be clothed with white robes in heaven when he should be cast into hell. Immediately he vanished. As soon as he was gone, the two women turned their faces towards me, looking as pale as a white wall. They said they were Mr. Burrough's first wives, and that he had murdered them. One of them said she was his first

wife, and he stabbed her under the left arm and put a piece of sealing wax on the wound; and she pulled aside the winding sheet and showed me the place, and also told me that she was in the house where Mr. Paris now lives when it was done. The other told me, the Mr. Burroughs and his present wife killed her in the vessel as she was coming to see her friends, because they would have one another; and they both charged me that I should tell these things to the magistrates before Mr. Burrough's face, and if he did not own them, they did not know but they should appear there this morning. Mrs. Lawson and her daughter appeared to me and told me that Mr. Burroughs murdered them. This morning there also appeared to me another woman in a winding sheet, and told me, that she was goodman Fuller's first wife, and Mr. Burroughs killed her because of some difference between her husband and himself. Prisoner on the ninth of May, at his first examination, most grievously tormented and afflicted Mary Walcott, Mercy Lewis, Elizabeth Hubbard and Abigail Williams, by pinching, pricking and choking them.

Elizabeth Hubbard. One night there appeared to me a little black-bearded man in dark apparrel, who told me his name was Burroughs. He took a book out of his pocket, and bade me set my hand to it. I refused. The lines in the book were as red as blood. He then pinched me and went away. He has often appeared to me since and threatened to kill me if I would not sign the book. He tortured me very much by biting, pinching and squeezing my body, and running pins into me. At his first examination on May ninth, he did most grievously afflict and torment the bodies of Mary Walcott, Mercy Lewis, Anne Putnam, and Abigail Williams. If he did but look upon them, he would strike them down or almost choke them to death. I believe in my heart, that Mr. George Burroughs is a dreadful wizard.

Sarah Viber. On the ninth of May as I was going to Salem village, I saw the apparition of a little man, like a minister, with a black coat on. He pinched me by the arm and bade me go with him, but I would not and when I came to the village, I saw Mr. George Burroughs, whom I never saw before. Then I knew, that it was his apparition which I had seen in the morning. He tortured me several times during the time of his examination. I also saw him or his appearance torment and afflict Mary Walcott, Mercy Lewis, Elizabeth Hubbard, Anne Putnam and Abigail Williams, by pinching, twisting and almost choking them to death. I believe in my heart, that he is a dreadful wizard.

Mercy Lewis. On the seventh of May, in the evening, I saw Mr. George Burroughs, who urged me to write in his book. He told me that the devil was his servant, and mentioned several whom he had betwitched. He tortured me dreadfully and threatened to kill me, for he said I should not witness against him. He also told me I should not see his two wives if he could help it, because I should not witness against him. On the ninth of May, Mr. Burroughs carried me up into an exceeding high mountain and

showed me all the kingdoms of the earth, and told me that he would give them all to me, if I would write in his book, and if I would not, he would throw me down and break my neck. I told him they were not his to give and I would not write if he threw me down on a hundred pitchforks.

Benjamin Hutchinson. On the twenty-first of April, Abigail Williams told me there was a little black minister who lived at Casco Bay, who told her he had killed two wives for himself, and one for Mr. Lawson, and that he could hold out the heaviest gun in Casco Bay in one hand, although any other man can scarcely hold one out in both hands. I asked her where this little man stood. She said just where the cart wheel went along. I had a three grained iron fork in my hand and I threw it where she said he stood, and she presently fell into a fit and when it was over said, "You have torn his coat, for I heard it tear." "Whereabouts?" said I. "On one side," said she. Then we came to the house of Lieutenant Ingersol, and I went into the great room. Abigail came in and said, "There he stands." I said, "where, where?" and presently drew my rapier, but he was immediately gone, as she said. Then she said, "There is a gray cat." I struck with my rapier and she fell into a fit. When it was over, she said, "You have killed her."

Simon Willard. Being at the house of Mr. Lawrence at Falmouth, in Casco Bay, in September, 1689, he was commending the strength of Mr. Burroughs, saying that none of us could do what he could; "For," said he, "Mr. Burroughs can hold out his gun with one hand." Mr. Burroughs being present, explained where he took hold of the gun to hold it out, but he did not hold it out then. The gun was near a seven feet barrel and very heavy. I could not hold it out with both hands long enough to take sight. In 1689, being in Captain Sargeant's garrison, Mr. Burroughs said he had carried a barrel of molasses or cider from a boat to the shore.

Samuel Webber. About eight years ago I lived at Casco Bay, and George Burroughs was then minister there. Having heard much of his great strength, I conversed with him about it and he then told me that he had put his fingers into the bung of a barrel of molasses, lifted it up, and carried it round him, and set it down again.

Samuel Harris. I formerly lived at the house of Burroughs in Falmouth, and often when he was absent conversed with his wife, he knew what was said and told her on his return.

There appears to have been some further testimony of which there is no record. The prisoner said little; made some attempt to explain away the testimony against him, but became confused. He handed in a paper to the jury, in which he utterly denied that there was any truth in the received notions of witchcraft. The jury returned a verdict of GUILTY and he was sentenced to die.

THE EXECUTION

On the nineteenth of August, he was carried in a cart through the streets of Salem with others who were to die. Upon the ladder he made a calm and powerful address to the multitude, in which he asserted his innocence "with such solemn and serious expressions as were to the admiration of all present." He then made a prayer concluding with the Lord's Prayer, which he repeated in a clear, sonorous tone, with entire exactness, and with a fervency that astonished. Many were affected to tears, and it seemed as if the spectators would hinder the execution. But the accusers cried that the devil assisted him; the execution proceeded, and the husband, the father, and the minister of God, was violently sent to his long home. Cotton Mather, on horse back in the crowd, addressed the people, declaring that Burroughs was no ordained minister, insisted on his guilt, and asserted that the devil had often been transformed into an angel of light. When the body was cut down, it was dragged by the halter to a hole about a foot deep. It was stripped of its garments and some old clothing of one executed being put upon the body, it was thrown in with two others, a part of it being left uncovered.

After the death of Burroughs, it was related, that the night before his execution there was a great witch meeting, at which the sacrament was administered; that Burroughs was present and took leave of his companions, bidding them hold fast to the faith and make no confession.

THE TRIAL OF COMMANDER ALEXANDER S. MACKENZIE FOR MURDER, BEFORE A NAVAL COURT OF INQUIRY. BROOKLYN. NEW YORK. 1842

THE NARRATIVE

The *Somers,* a brig of war of the United States, sailed from New York on the 12th of September, 1842, under the command of Commander Alexander Slidell Mackenzie,[1] an officer, for nearly thirty years in the service of his country. To a distinguished name in his profession, he joined honors obtained in other fields of exertion; and the fame of the successful author enhanced the well-deserved reputation of the officer. The brig was small, a very swift sailer, with raking masts, and mounting ten guns. Her crew consisted of one hundred and twenty men, of whom twelve were officers, nine ordinary seamen, six landsmen, and the remainder apprentice boys between the ages of thirteen and eighteen years, who had been detached from the receiving ship *North Carolina,* lying at the port of New York, on board of which was the naval school. Holding the rank of midshipman, among the

[1] MACKENZIE, Alexander Slidell (1803–1848). Born in New York City. Was the son of John Slidell and the brother of the Louisiana Senator of the same name who going to England as a plenopotentiary from the Federal Government was captured and taken from the British Steamship *Trent* by Captain Wilkes in 1861 which incident came near causing war between the United States and England. The name of Mackenzie, that of his mother, he added in 1837 at the request of a maternal uncle. He entered the United States Navy as a midshipman in 1815, became lieutenant in 1825 and Commander in 1841. After his acquittal by the Court Martial, he was sent by President Polk on a mission to Cuba in 1846; he commanded a division of artillery in the Mexican War. Later he attained note as an author. His "A Year in Spain by a Young American," was very popular both in England and this country. He also wrote many other works of adventure and biography.

officers was Philip Spencer, son of Hon. John C. Spencer,[2] at that time Secretary of War, and a conspicuous member of the cabinet of President Tyler. Before sailing, Commander Mackenzie had heard of previous misconduct on the part of Spencer, which had incurred the severe censure of the Navy Department. "The circumstance," said Commander Mackenzie, "of his connection with a high and distinguished officer of the Government, by enhancing, if possible, his baseness, increased my desire to get rid of him." The brig's destination was the coast of Africa, where she was to convey dispatches to the sloop of war *Vandalia*, and to join that vessel in protecting our commerce.

On her outward passage, as far as Madeira, the usual regularity and order prevailed. The crew under good discipline; the rules of the service rigidly enforced; its exercises, such as firing at targets, and maneuvering the guns, strictly attended to; in short the brig was in as effective a condition as could have been expected, seeing that the crew was made up, to so great an extent, of young apprentices. Spencer did his duty, and was treated by the Commander, like the other midshipmen. Perhaps, the Commander said, he had reproved Spencer somewhat less than the others, for slight deviations from the line of duty, because he had little hope of essentially serving one who had proved to be so decidedly his own enemy. It was observed, however, that Spencer was in the habit of associating very little with the other officers, but was continually intimate with the crew, was in the habit of joking with them. He seemed to shun with care the company of his superiors, while he courted that of the older boys, and the ordinary seamen of the vessel, giving them occasionally money, and endeavoring to amuse them and attach them to himself. He drew from the purser a large quantity of tobacco and cigars,

[2] SPENCER, John Canfield (1787-1855). Born in New York. Member of Congress 1816. Member of State Assembly 1820, 1832. Elected Secretary of State of New York in 1832 and appointed United States Secretary of War in 1841. Was a successful lawyer and achieved his highest fame from his connection with the revision of the statutes of New York.

far more than any other officer, which he distributed among the apprentices and seamen, whose favor he seemed desirous to secure. On the day before leaving New York, he gave money to Small, an ordinary seaman; on the passage out, he gave money to Cromwell, the boatswain's mate,—and he also corrupted the ward-room steward, and induced him, at different times, to steal brandy, which he drank himself, and distributed among his favorites of the crew.

After the *Somers* stopped at Madeira, on her passage to the coast of Africa, a change took place in the conduct of the crew, and the influence of Spencer seemed to be gaining an ascendency. In conversation he often betrayed his desire to have command of a vessel of his own. At the same time, his intimacy with Cromwell, Small, and others of the crew, was observed to increase. His manner towards his messmates became more reserved; but among the crew he was loud and blasphemous in his abuse of the Commander, declaring that it would give him real pleasure to roll that officer overboard from the round-top.

With the purser's steward, James W. Wales, the Commander once had a trifling difficulty, which probably led Spencer to believe that this person could be drawn over to his designs. The attempt to do this resulted in the discovery of the plot. The brig had left Cape Palmas on the eleventh of November, for the United States, intending to stop at St. Thomas, in order to take in a fresh supply of provisions and other necessaries. On the night of the twenty-fifth of November, between six and eight o'clock in the evening, Wales was standing on deck, when Spencer came up, and, after a few remarks about the weather, asked him to get on top of the booms, as he had something very important to communicate. Wales accordingly, contrary to a regulation of the ship, mounted the booms with him, and, after taking an oath of the most solemn secrecy, which, to his astonishment, was prescribed by Spencer with great seriousness, he obtained from the latter a full account of his plans. According to this account, Spencer was then leagued with about twenty of the

brig's company to take the brig, murder all her officers, and enter upon a career of piracy. The plan and stations of the men were arranged in a paper concealed in his cravat. He requested Wales to feel his neck-handkerchief, who felt a rumpling there which showed that there was paper in the back part of it. The affray was to be commenced some night when Spencer had the mid-watch. Several of his men would engage in a fight on the forecastle. He was to order them up to the mast, and, under pretense of settling the difficulty, to call Mr. Rogers, the officer of the deck, whom they were to seize as soon as he came to the gangway, and throw overboard. They would then have the brig in their own possession. The keys of the arm-chest, he said, he could lay his hands on at any moment. This was to be opened and the arms distributed. He was next to station his men on the hatches to prevent anyone from coming on deck, and then to proceed to the cabin and murder the Commander with the least noise possible. He was then, with some of his men, to penetrate to the ward-room, and there murder the officers. The officers of the ward-room, he said, had no arms, except the first lieutenant, who had an old cutlass, which he should take care to secure, before the affray commenced. This accomplished, he said he should go on deck, and cause the two after-guns to be slued round, so as to command the vessel from a raking position. He would then cause all the crew to be called up, and select from them such as would serve his purposes. The remainder, particularly the small boys, he should cause to be thrown overboard, as useless consumers of biscuit. This done, the brig was to proceed to Cape San Antonio, or to the Isle of Pines, and there take on board one who was familiar with their intended business, and who was ready and willing to join them. Then was to commence the career of piracy. Spencer dwelt with complacency upon the course to be pursued, and the pleasures to be enjoyed. Prizes were to be captured; and after taking from them whatever would be of use, all on board were to be murdered, except the women reserved for a more brutal purpose, and

the ships scuttled, so that no tale of their fate should reach the shore.

At this relation Wales was too much astonished to make any reply. Spencer then called up Small, the seaman with whom he had been intimate through the voyage. He addressed him in Spanish; but Wales could not tell, as he did not understand the language, what they were talking about. Small looked surprised, however, at what was told him. Spencer then remarked in English, "Oh, you need not be under any apprehension or fear on his account, as I have sounded him pretty well, and find him one of us." Small seemed pleased, and remarked that he "was very glad to hear it." He was then called away about his duty. Before going, Spencer remarked, that he should have the mid-watch that night, and wished to have some further conversation relative to their plans. He desired Small, in the meantime, "to see *that* fore-top man," without naming him. Spencer then made overtures to Wales, and offered, if he would join in the conspiracy, to give him the post of third officer in command. He then asked Wales what he thought of the project; to which the latter replied, thinking it prudent to dissemble in order the gain further information, that he was favorably disposed to it. Spencer remarked that they would have another interview on the next day, when he would exhibit the plan which he had drawn up. He followed Wales to the gangway, saying that if he lisped a syllable of what had been communicated to him, he should be murdered, either by Spencer himself, or by other persons engaged in the plot; that, go where he might, his life would not be worth a straw.

Wales promised secrecy; but resolved at once to communicate to his Commander all that he had heard. He found himself so closely watched by Small and Spencer, that he was foiled in his attempts that night; but, the next morning, he succeeded in imparting it to the purser, Heiskell, who related it to Lieutenant Gansevoort, by whom it was communicated to the Commander. The latter received the communication with great coolness, and expressed doubts of its truth. In his

official dispatch, he says, that the whole affair seemed to him so monstrous, that he treated it with ridicule. His impression was, that Spencer had been amusing himself and Wales with some mere story of piracy and murder. He directed the lieutenant, however, to keep a careful watch upon Spencer, and to report everything that appeared suspicious in his movements. At a later period of the day, the lieutenant, who had been an anxious observer of what passed, urged upon the Commander the necessity of taking some active measures. The latter still replied, that he wished to do nothing hastily; that they would keep a sharp look-out, and, when the drum beat for evening quarters, decide what course it was best to pursue.

On the drum beating to quarters, in the presence of all the officers on the quarter-deck, the Commander directed the lieutenant to arrest Spencer and place him in irons, ordering, further, that he should be put to instant death, if he was detected in speaking to, or having communication with, any of the crew. Spencer was searched; but nothing was found upon him except a few scraps of paper. On searching his locker, however, a razor case was found, and, inside of it, a piece of white paper, on which were written what appeared to be strange characters, but which proved to be Greek, of which language Spencer had some knowledge. This paper was read by Midshipman Rogers, and converted into English characters as follows.

"Certain—P. Spencer, Andrews, McKinley, Wales.

"Doubtful—Wilson, McKie, Warner, Green, Geney, Wilzer, Sullivan, Godfrey, Gallia, Howard.

"To be kept, nolens volens—Sibble, Strumner, Scott, Van Brunt, Smith, Whitmore, Gazeley, Blackman, Waltham, Rodman, Clark, Nevers, Selzer, Corning, Richardson, the Doctor, Guevan.

"Those marked doubtful, with a cross opposite their names, will probably join before the plot is carried into execution. The remainder marked doubtful will probably join when the thing is done; if not, they must be forced.

"Any not marked down who may wish to join after the thing is done, we will pick the best out and dispose of the rest.

"Wheel—McKie.

"Arm-chest—McKinley.

"Cabin—Spencer, Small, Wilson.

"Ward room—Spencer.
"Steerage—Spencer, Small, Wilson."

Small, as we have already seen, was an accomplice of Spencer. Various circumstances directed the suspicions of the officers towards Cromwell. Both of these persons were accordingly placed under arrest, on the 28th of November. The anxieties of the officers continued to increase. The crew gathered, from time to time, in knots. Spencer was observed endeavoring to hold communication with some of them. On the 30th of November, four others, McKie, McKinley, Wilson, and Green, were placed under arrest. The prisoners, now amounting to seven, were all confined on the quarter-deck. Owing to the contracted dimensions of the brig, there was no other place on board, which was more secure against an attempt at a rescue. But here it was difficult to prevent them from communicating with each other, and they interfered essentially with the management of the vessel. At the time they were confined, it was the evident intention of the Commander to take them to the United States, to be delivered up to the justice of their country. To effect his desired object, he tried every measure that a brave, prudent, and skilful officer could adopt. But, during the confinement of the prisoners, sullenness, discontent, inattention to duty, disobedience to orders, often—as seamen know, and naval records establish—the precursors of open acts of violence, were manifested by the crew.

Feeling the necessity of immediate action, and desiring all the counsel the officers of the vessel could give him, Commander Mackenzie, on the 30th of November, addressed to his officers a letter, in which he called upon them to take into deliberate and dispassionate consideration, the present condition of the vessel, and the contingencies of every nature throughout the remainder of the cruise, and then furnish him their united counsel, as to the course proper to be pursued. On the receipt of this letter, they assembled in the ward-room, and commenced the examination of witnesses. These were duly sworn, and their testimony written down, and subscribed by each witness, after it had been read over to him. The

officers passed the whole day in the performance of this duty, without interruption and without food. The Commander remained in charge of the deck, with the three young midshipmen on constant duty. On the morning of Thursday, the 1st of December, the officers again assembled in the cabin, and, after a further consultation, addressed the Commander the following letter, expressing their unanimous opinion, that the safety of the brig required the immediate execution of Spencer, Cromwell, and Small.

"*Sir:* In answer to your letter of yesterday, requesting our counsel as to the best course to be pursued with the prisoners, Acting Midshipman Philip Spencer, Boatswain's Mate Samuel Cromwell, and Seaman Elisha Small, we would state, that the evidence that has come to our knowledge is of such a nature, that, after as dispassionate and deliberate a consideration of the case as the exigency of the time would admit, we have come to a cool, decided, and unanimous opinion, that they have been guilty of a full and determined intention to commit a mutiny on board of this vessel of a most atrocious nature, and that the revelation of the circumstances having made it necessary to confine others with them, the uncertainty as to what extent they are leagued with others still at large, the impossibility of guarding against the contingencies which 'a day or an hour may bring forth,' we are convinced that it would be impossible to carry them to the United States, and that the safety of the public property, the lives of ourselves, and of those committed to our charge, requires that (giving them a sufficient time to prepare) they should be put to death, in a manner best calculated, as an example, to make a beneficial impression upon the disaffected. This opinion we give, bearing in mind our duty to our God, our country, and to the service."

The Commander concurred in the opinion of his officers. The three chief mutineers were the only persons capable of navigating the vessel, and their execution would leave the rest without knowledge or confidence. By their execution, the very eye of the mutiny would be put out, and the monster left dispirited to grope in darkness. It is not necessary to dwell long on the painful scene which ensued. The three prisoners were executed on the 1st of December, 1842. At the time of the execution the brig was five hundred and twenty-five miles distant from St. Thomas, at which place she arrived on the 5th of December. Previous to their death, Spencer and Small both confessed their guilt, in the presence

of the officers and crew, and acknowledged that their punishment was just. Spencer added, that he had attempted a mutiny on board the two national vessels in which he had last sailed, and that his piratical propensity was a sort of mania.

On his arrival in New York, Commander Mackenzie asked for a Court of Inquiry on his conduct. This court was composed of three officers, than whom none were more distinguished in our naval service; Captain Stewart, President, Commodore Dallas, and Commodore Jones. They were authorized to inquire into all the facts touching the alleged mutiny on board the *Somers,* and the conduct of Commander Mackenzie in ordering the execution of Spencer, Cromwell, and Small, and to report to the Department their opinion as to the right and propriety of those proceedings. During nineteen days, they examined every officer, seaman, and apprentice, belonging to the *Somers,* with the exception of ten of the crew who were in confinement. Their unanimous opinion was that a mutiny had been organized on board the *Somers* to murder the officers and take the brig; that Spencer, Cromwell and Small were the ringleaders; that the execution of the three was necessary for the safety of the lives of the officers and crew, and that the Commander's act was justifiable and necessary.

Later a court martial was ordered which lasted forty days, but whose conclusions were the same and the honorable acquittal of the Commander was confirmed by the President of the United States.

THE TRIAL[8]

Before the Naval Court of Inquiry, Brooklyn, New York, December, 1842.

[8] *Bibliography.* * "Proceedings of the Court of Inquiry appointed to inquire into the intended mutiny on board the United States Brig of War *Somers,* on the high seas; held on board the United States ship *North Carolina* lying at the Navy Yard, New York; with a full account of the execution of Spencer, Cromwell and Small, on board said vessel. Reported for *The New York Tribune.* New

CAPTAIN CHARLES STEWART,[4] *President.*

COMMANDER A. J. DALLAS.[5]

COMMANDER JACOB JONES.[6]

December 28.

The Court of Inquiry appointed by the Secretary of the Navy to investigate the mutiny on board the United States Brig of War *Somers* met to-day on board the Receiving Ship *North Carolina* at the Brooklyn Navy Yard.

Ogden Hoffman,[7] Judge Advocate, for the Government.

York, Greeley & McElrath, 160 Nassau Street. Tribune Buildings, opposite the park. 1843." The pamphlet has a full page woodcut of Commander Mackenzie taken by an excellent artist while attending the Court of Inquiry. It has also two cuts of the different decks of the *Somers;* also a full page picture of the *Somers* under full sail. It has also a facsimile of the paper found in Spencer's locker.

[4] STEWART, Charles (1778-1869). Born in Philadelphia. A midshipman, afterwards lieutenant and commander. Took part in the Tripolitan War 1804. Captain of the famous *Constitution* called *"Old Ironsides,"* 1814. Awarded the thanks of Congress for his services in the war of 1812. Commander of Mediterranean Squadron 1820; Pacific Squadron 1824; Philadelphia Navy Yard 1854-1861. Became Rear Admiral, 1862.

[5] DALLAS, Alexander James (1791-1844). Born in Philadelphia. Became Lieutenant U. S. Navy 1810. Took part in the war of 1812. Port Captain 1828. Commander West Indies Squadron 1835; Pacific Squadron 1843.

[6] JONES, Jacob (1768-1850). Born in Delaware. Graduated from U. S. Naval Academy. With Commodore Barry and at Tripoli where he was captured. Later captured by the British (1812). With fleet that defeated the Dey of Algiers. Later Commander of the Mediterranean and Pacific U. S. Squadron. Was in command of the Baltimore Station and Port Captain of New York.

[7] HOFFMAN, Ogden (1793-1856). Born in New York City. Graduated from Columbia College 1812. Entered U. S. Navy as Midshipman 1814 and resigned in 1816. Studied law and was admitted to Bar in 1826, became a law partner of Hugh Maxwell, then District Attorney of New York City, and succeeded him in that office in 1829. Member of Congress 1836. U. S. District Attorney 1845. Attorney General of New York 1853. "He has been styled the Erskine of the American Bar. He was probably the most consummate criminal lawyer that America has produced." In the History of the Bench and Bar of New York it is said: "Robinson, indicted for the murder of Helen Jewett, a gay woman, was acquitted wholly owing to Hoffman's eloquence and tact, the evidence against him being apparently overwhelming." See post Vol. III Richard P. Rob-

John Hone, of the New York Bar, appeared at the request of Commander Mackenzie not as counsel, but to take minutes of the proceedings of the Court.

The *Judge Advocate*. read the warrant from Secretary Upshur,[8] constituting the Court and authorizing it to inquire into all the facts touching the alleged mutiny on the *Somers* and the conduct of Commander Mackenzie in ordering the execution of Midshipmen Philip Spencer, Samuel Cromwell and Elijah Small, and to report its opinion as to the right and propriety of these proceedings.[9]

inson. His son was Federal Judge of California from its admission as a state until 1891.

[8] UPSHUR, Abel Parker (1790-1844). Born in Northampton, Va. Admitted to Richmond Bar 1824. Member of State Legislature 1826. Judge of General Court, Virginia 1826-1841; member of the State Constitutional Convention 1829. Secretary of the Navy in President Tyler's Cabinet 1841-1843. Secretary of State 1843-1844. Author of "The State Rights Theory of the Constitution" (1840) also a number of political papers. Was accidentally killed by the explosion of a gun on board the United States man of War *Princeton* on the Potomac River Feb. 28th, 1844.

[9] The following are the articles of the Naval Law of the United States in reference to Mutiny on board of men-of-war:

ARTICLE 24—LAW OF 1789—*Mutiny and Sedition.*

Any officer, seaman, marine, or other person, who shall disobey the orders of his superior, or begin, excite, cause, or join in any mutiny or sedition in the ship to which he belongs, or in any ship or vessel in the service of the United States, on any pretense whatsoever, shall suffer death, or such other punishment as a court martial shall direct; and, farther, any person, in any ship or vessel belonging to the service aforesaid, who shall utter any words of sedition and mutiny, or endeavor to make any mutinous assembly, on any pretense whatsoever, shall suffer such punishment as a court martial shall inflict.

ARTICLE 13—LAW OF 1800.

If any person in the Navy shall make or attempt to make, any mutinous assembly, he shall, on conviction thereof by a court martial, suffer death; and if any person aforesaid shall utter any seditions and mutinous words, or shall conceive or connive at any mutinous or seditious practices, or shall treat with contempt his superior, being in the execution of his office, or, being witness to any mutiny or sedition, shall not do his utmost to suppress it, he shall be punished at the discretion of a court martial.

ARTICLE 14.

No officer or private in the Navy shall disobey the lawful orders of

December 30.

COMMANDER MACKENZIE'S STATEMENT.

The PRESIDENT called upon the Commander for his narrative of the case which he handed to the Judge Advocate who read it as follows:

Since my arrival at this port I have been diligently engaged in preparing for the Department at Washington a full and detailed narrative of all the circumstances connected with the mutiny on board the U. S. brig-of-war *Somers* on her recent voyage from Africa; but having been frequently interrupted, especially by the solicitude of friends, I have been forced to relinquish my first intention and to confine myself entirely to a sketch of the principal occurrences. After leaving the Azores and Madeira in October I proceeded, according to orders, to Teneriffe and Porto Praya. Thence I went to Liberia expecting to find the U. S. sloop-of-war *Vandalia*. But on arriving there I learned that she had sailed on the 5th of October for the United States as I understood. The dispatches with which I was entrusted for her being thus rendered of no use were left with the U. S. Agent, whose receipt for them is enclosed. On the 11th of November I sailed for the United States via St. Thomas, where I thought it necessary to take in a supply of bread, water and other refreshments. On Saturday, the 25th of November, Lieut. Gansevoort came into the cabin and informed me that he had learned from Midshipman Wales that a conspiracy existed on board the ship to capture the vessel, to murder the Captain, bring over as many of the crew as possible, murder the rest and convert the vessel into a pirate; and that Midshipman Spencer was at the head of the conspiracy. This, Lieut. Gansevoort said had been told to him by Midshipman Wales, whose narration was as follows:

On the night of the 25th of November, between 6 and 8

his superior officer or strike him, or draw, or offer to draw, or raise any weapon against him while in the execution of the duties of his office, on pain of death, or such other punishment as a court martial shall inflict.

o'clock in the evening, Wales said he was aroused by Spencer, who asked him to go upon the booms, as he had something to say to him. He got up, and, on arriving at the booms, he was asked by Spencer, "Do you fear death? do you fear a dead man? do you fear to kill a man?" Wales, with admirable coolness, induced Spencer to go on, took the oath of secrecy, and entered into all his plans. Spencer told him that he had about 20 men in his plot; that they would easily get possession of the ship, murder the Commander and officers, and commence piracy. He gave Wales all the details of his plan, which were admirably suited for his purpose, and arranged much better, Mr. Wales said, than he could have done it himself. As an inducement to embark in the enterprise, Spencer said that a large box of wine on board contained a large amount of gold and other treasure. His object was to go to the Isle of Pines, where one of his associates, who had been a pirate before, had a confederate; that he would attack no vessels that he could not capture, and destroy all he captured; that he would select from them such females as were proper, use them, and then dispose of them; that he had all the details of the plan drawn out on a paper, which was in the back of his cravat. He showed money to Mr. Wales, and, before separating, threatened him with instant death if he ever revealed what he had told him.

Such was the purport of the information which I received. To me the whole affair seemed so monstrous that I treated it with ridicule, and believed that Spencer had been amusing himself and Wales with some story of piracy he had learned from some novel or tale of murder. Still I could not help feeling that it was sporting with a serious subject and that my duty required me to be upon my guard, and I resolved closely to watch the movements of Spencer. I directed the First Lieutenant to observe him very narrowly. I learned that in the course of the day Spencer had been in the ward-room for some time, and had busied himself in examining a chart of the West Indies, and that he had made some inquiries concerning the isle of Pines. The Lieutenant told him that he believed

it was a place much frequented by pirates, and drily asked him if he had any acquaintances there. Spencer passed the day sullenly, and was often observed to be examining a paper, and writing with a pencil, and making rings with his penknife. Lieut. Gansevoort soon after made some excuse for following him to the foretop, when he found him engaged in working some love devices upon his arm. He expressed a desire to learn the rate of the chronometer, and was referred to the Master of Marines. He was frequently seen engaged in holding secret conferences with Boatswain Cromwell and Small, and was known to have given money to different persons of the crew. He had also incited the steward to steal brandy, which he had given to the crew, and with which he had once or twice got drunk himself.

I have thought it due to the ward-room officers to state the circumstances connected with their having brandy on board. When the vessel was first equipped, I told the first Lieutenant that it was my desire that no liquor should be used in the steerage of the vessel; and gave as a reason for this that the obligations of hospitality always fell upon the Captain and his under officers, and that upon such occasions all should have their share. This hint had its intended effect, and I never had occasion to use compulsion. Knowing that Lieutenant Gansevoort viewed the matter in the same light, I did not interfere with the arrangements of the ward-room; and if I had done so it would only have been in the way of friendly advice. It now appears that when the vessel was ordered to the coast of Africa, a supply of brandy had been ordered on board by one who had previously been on the same voyage, and who thought it would be a good defense against the malaria of that coast. By accident, as I then thought, but by design, as subsequent developments have made probable, the steward ordered the brandy from two different grocers, so that double the quantity required was brought on board. None of this was used by the mess or by any others than Spencer and those whom he endeavored to corrupt.

Spencer had the faculty of throwing his lower jaw out of

joint and of thus playing with it a variety of musical airs; and he was frequently found thus amusing the crew. In his intercourse with me he was servile to the last degree; but among the crew I learned that he was loudly and blasphemously vituperative against me, and that he had often abused me in the most outrageous and violent terms, and declared that it would give him real pleasure to roll me overboard from the round top. I found that he had drawn a representation of a black flag and asked members of the crew what they thought of it; that he had often said the vessel could be easily taken; that he had not long before examined the palms of the hands of one of the midshipmen, to tell his fortune, and had predicted for him a speedy and violent death.

These things induced me to look back over all I had heard or observed of the *Somers*. When young Spencer first reported himself to me for duty on board my vessel I gave him my hand and welcomed him on board. I heard not long after that he had been involved in difficulty when on the Brazil station and that he had been dismissed for drunkenness. Upon hearing this I earnestly desired his removal from my vessel—principally on account of the young men I had with me; two of whom were connected with me by blood, two by alliance, and four were entrusted to my especial care. The circumstance of his connection with a high and distinguished officer of the Government, by enhancing, if possible, his baseness, increased my desire to get rid of him.

On this point, I beg that I may not be misunderstood. I revere authority, and in this Republican country I regard its exercise as an evidence of genius, intelligence and virtue. But I have no respect for the base son of an honored father. On the contrary, the conduct of that man who sullies by his crimes the pure fame and the high honor of his parent seems to me to be far more base than one equally guilty from an humbler station. But I wish nothing to do with baseness in any shape; least of all on board a vessel belonging to the United States. On this account I wished to get rid of Spencer.

Two others soon after joined the vessel, and thus seven were obliged to occupy the space fitted only for five. I had heard that Spencer had expressed a willingness to be transferred and hopéd that he would now consent.

I desired Lieut. Gansevoort to state to Mr. Spencer that if he would apply to Commodore Perry to detach him from the *Somers* I would second his application. The application was according made and I seconded it, earnestly urging that it might be granted in order to secure the comfort of the young officers. Commodore Perry, however, declined to detach Midshipman Spencer but said he would consent to detach Mr. Rogers. I could not, however, consent to part with Mr. Rogers, whom I had long known to be an accomplished seaman, a gentleman and an officer of the highest attainments both in and beyond his profession. The *Somers* accordingly sailed with seven in the steerage; they could not all sit down together at the table; two of them had no lockers but slept upon the steerage deck, and subjected themselves to considerable inconvenience, to all which, however, they readily submitted without the slightest murmur or complaint, and performed every duty which fell to them to the perfect satisfaction of all the officers.

All these things I called to recollection and endeavored carefully to review the whole conduct of Spencer. I had treated him precisely as I treated other midshipmen; though I had perhaps reproved him somewhat less than the others for slight deviations from the strict line of his duty. This arose from my conviction that there could be but little hope of essentially serving one who had proved to be so decidedly his own enemy. I observed that he was in the habit of associating but little with the other officers, but that he was continually intimate with the crew. He was often in the habit of joking with them and smiling whenever he met them, with a smile never known but on such occasions; and I had frequently observed in him a strange flashing of the eye.

Recalling these things in addition to what had been revealed, I resolved at once to make myself sure of his person, though

I thought that I would first let Mr. Wales have another interview with him and obtain further knowledge of his mutinous plans. If he was really in earnest enough, however, was already known.

In the evening I gave orders to Mr. Perry, my clerk, to have all the officers come aft upon the quarter-deck. When they were brought up, I approached Spencer and addressed him thus: "I understand, sir, that you aspire to the command of the *Somers*." With a deferential air he replied: "Oh, no, sir!" "Did you not," said I, "tell Mr. Wales that you had a mutinous project on foot—that you intended to kill the Commander and the officers of the *Somers*, and such of the crew as you could not seduce to your plans, and to enter upon a course of piracy?" "I may have told him something like it," he replied, "but it was only in joke." "You admit, then, that you told him of such a plan." "Yes, sir." "This, sir," I continued, "you must know is *joking* upon a forbidden subject. This joke, sir, may cost you your life. Be pleased, sir, to remove your neck-handkerchief." He did so. I took it and opened it, but there was nothing in it. I asked him what he had done with the paper that was in it? "The paper," he said, "which had been in it contained my day's work; and I destroyed it." "It is a strange place, sir," said I, "to keep your accounts." He acquiesced with an air of the greatest deference and blandness. I said to him, "Your design was to make yourself commander of this vessel. You must have been aware that you could compass it only by passing over my dead body and over the dead bodies of all the officers of the *Somers*. You had laid out for yourself, sir, a great deal to do. It is my duty to confine you." Turning to Lieut. Gansevoort, I said, "Arrest Mr. Spencer, and place him in double irons." Lieut. Gansevoort stepped forward and received from Mr. Spencer his sword. Mr. Spencer was then ordered to sit down: he did so. Double irons were then put upon him, as were also hand-cuffs for the sake of greater security. I directed Lieut. Gansevoort to place a watch over Mr. Spencer, and to give orders to put him to instant death

if he was detected in speaking or holding any communication with any of the crew. The nature of these orders was told to Mr. Spencer. At the same time, I directed him to allow him every possible indulgence consistent with his safe keeping. The task was executed by Lieut. Gansevoort with the greatest kindiness and humanity. While he watched with an eagle eye over all his movements, and was ready at a moment's warning to take his life upon a violation of those conditions on which his safety depended, he attended to all his wants, covered him with his own garment from the squalls of rain by which we were visited, and ministered in every way to his comfort with all the tenderness and assiduity of a woman.

The officers were then remanded to quarters; the crew and batteries were inspected, the orders were repeated, and the retreat was beaten. The officers of the watch were all directed to be fully armed with cutlasses and pistols, with rounds of ammunition, and everything was put in order for the night.

On searching the locker of Spencer, a razor case was found in it, which he had recently drawn from the Purser. On opening it there was no razor within, but in its stead a piece of paper in which was rolled another. On the inner paper was written a string of characters, afterwards found to be Greek letters, with which Spencer was known to be familiar. It fortunately happened that there was on board another individual who was well acquainted with the Greek—one whose knowledge of this as of everything else, was devoted wholly to the service of his country. The Greek characters, on being converted into our own language by Mr. Henry Rogers, proved to contain the plan for the proposed mutiny. There was a list of the different members of the crew, some of whom were marked certain and others doubtful; some were marked to be kept at all events, and others to be destroyed. Those were designated who were to do the work of murder in the various apartments; others were to open the arm-chest, and the stations of all were assigned.

The following day was Sunday, and all were to be inspected at 10 o'clock. I took my station aft for the purpose of observ-

ing Cromwell and Small as they should come along upon the quarter-deck. The persons of both were faultlessly clean and neat—they being determined that their appearance should provoke no reproof on account of fault in that particular. Cromwell stood up to his full stature, carrying his battle-axe firmly and steadily; his cheeks pale, but his eye fixed to starboard. He wore a determined and dangerous air. Small presented a very different figure. His appearance was ghastly, his manner uneasy; he shifted his weight from side to side, and his battle-axe from hand to hand. His eye was never for a moment fixed, but always turned from me. I attributed his conduct to fear; though I now believe the business upon which he had entered was repugnant to his nature, but that his love for money and rum was too strong for his fidelity. Five bells, or 10 o'clock, was the time for Divine service. The First Lieutenant asked if he should call the roll. I told him it would be best to wait till the time was up. Five bells struck and all were called to muster. The crew were all present, were unusually attentive, and their responses were more than ordinarily full and audible. In the examination their countenances exhibited nothing to excite distrust.

In the afternoon the sky-sails and studding-sails were set. Gasely, one of the best of the apprentices, was sent aloft on the royal yard to make some alteration in the rigging. At once a sudden jerk was given to the brace by Small and another, who has not been discovered, and the fore-topmast, with the topsail, gallant-staysail and head-gaff-topsail, at once came down. Gasely was on the royal yard. I scarcely dared to look to see the spot where the boy should fall. The next moment his shadow appeared at the mast-head, and I presently discovered him examining, with admirable coolness, what was to be done.

I did not dare to believe this carrying away of the topmast the work of treachery: but I knew that an occasion of this sort, such as the loss of the boy, which should create confusion and interrupt the duty of the officers, would be sought by

them if they were bent on the prosecution of the enterprise. All possible measures were taken to prevent confusion. The rigging was immediately restored and the sails bent afresh. Every member of the crew was employed, and all things were made to go on with regularity. To my astonishment upon the occurrence of this disaster all the conspirators who were named in the programme of Spencer, no matter in what part of the vessel they were engaged at the time, immediately mustered at the mainmast—whether animated by some new-born zeal to serve their country, or intending to carry out their designs, I cannot say. This circumstance at once confirmed my belief in the continued existence of the danger. The eye of Spencer traveled continually to the mast-head, and he cast quick and stealthy glances about, as he had not done before. The wreck was soon cleared away, and supper piped.

After supper the same persons mustered at mast-head, and the sails were set. After quarters they dispersed. Still I did not think it safe to leave Cromwell at liberty during the night, which was emphatically the season of danger. After consulting with Lieut. Gansevoort, I determined to arrest Cromwell. An officer was sent to guard the rigging. I met Cromwell at the foot of the Jacob's ladder, going aft, and stopped him. I asked him about the conversation he had had with Spencer. He denied that it was he, and said, "It was not me, sir; it was Small." (Cromwell was the tallest man on board the vessel and Small the shortest.) Cromwell was immediately put in irons. Small being thus accused by an associate, was also ironed. The utmost vigilance was enjoined upon the officers. All were armed, and either myself or the First Lieutenant was constantly on deck.

The next morning, which was Monday the 28th of November, two crimes of considerable magnitude came to light. One of the men had been detected in stealing from a boat and the steward had stolen money and given some of it to Spencer. This was no time to relax the discipline of the ship, and both the men were punished to the extent of the law. It was soon after found that a man named Waltham had told McKinley

where three bottles of wine were placed and offered them to him. McKinley was stationed near the arm-chest and reported this to the First Lieutenant. Punishment of Waltham, however, was postponed till the next day. Punishment of the other two being over I thought that a fit opportunity to endeavor to make an impression upon the crew. I had good reason to think that the danger of the conspiracy was not over. I believed that a majority of the crew might be said to be in general disaffected and disposed to resist discipline. Some mysterious agency had evidently been at work since the departure of the *Somers* from New York; and this was now disclosed. I explained to the crew the general nature of Spencer's plot and the atrocious character of the designs he had formed. I took especial care not to betray a suspicion that I thought any particular one of them was deeply implicated, but exhorted all of them to repent of their intentions and attend faithfully to their duty. I took good care to assure them that the majority of the crew must at all events share the fate of the officers. I strove to divert their minds from the pictures of successive vice which Spencer had presented to them. I brought up before them the images of friends at home; I endeavored to impress upon their minds the endearing nature of those ties of kindred from which Spencer had sought to sever them forever, and expressed the hope that within three weeks we should all be again among our friends. I thanked God that he had provided them all with dear friends who were deeply interested in their welfare, and that they had the prospect of so soon being once more among them.

The effect of my address on them was various. Many of them seemed delighted at their narrow delivery, and others seemed struck with horror at the thought of the terrible danger they had escaped. Some seemed overwhelmed with terror at the anticipation of punishment that awaited them. Others were overcome by thoughts of returning home, and wept profusely at the mention of the friends they hoped so soon to see. I could not help believing that all the crew were

now tranquil, and that the vessel was again safe. Having observed that Spencer was endeavoring to hold intelligence with some of them, I directed the faces of all prisoners to be turned aft, and that no tobacco should be allowed them when the supply they had upon their persons at the time of their arrest should be exhausted. I told them that I would see that they had everything necessary for their comfort; that each should have his ration; that they should be abundantly supplied with everything necessary for their health and convenience. But I told them that tobacco was only a stimulant, and that, as I wished their minds to become as quiet and tranquil as possible, I could not allow them to use it.

The day after Spencer's tobacco was stopped, his spirit gave way. He would sit for a long time with his face buried in his cloak, and when he raised his head his face was bathed in tears. He was touched by the kind attention of Mr. Gansevoort. He told him that he was not then in a state to speak of anything, but that he would the next day tell him all—would answer any question that might be put to him.

On Tuesday after quarters, all hands were again called to witness punishment, and Waltham was punished to the extent of the law for offering three bottles of wine to McKinley. I then spoke to the crew of the necessity of conforming in all particulars to the orders of the vessel which were known. I told them that every punishment inflicted on board must be made known to the Secretary of the Navy, and that the less they were in amount the greater would be the credit that would attach to the Commander and the crew. But the whole crew, I soon found, were far from tranquil. They collected in knots upon the deck; seditious words were heard among them, and they assumed an insolent and menacing tone. Some of the petty officers were examined and found to be true to the colors, but it was the general impression that the vessel was far from being safe. There was reason to fear that on that very night a rescue would be attempted. I obtained a variety of intelligence concerning conferences among the disaffected. Individuals whom I had not supposed to be

implicated were found closely associated with several who were known to be among the disaffected, and several times there were symptoms that they were about to strike the blow. Mr. Wales once detected C. A. Wilson in drawing out a handspike from its place; and on presenting his cocked pistol at him, he only offered some lame excuse. I became exceedingly anxious, and remained constantly on deck. At 12 o'clock the watch was called. McKinley, Green and one or two others missed their muster: they could not be asleep, and why they should be absent just at that time, when they never had been before, was not easy to be seen. When they appeared, they all had some lame excuse. They probably had agreed to meet at that time and to commence some act of violence.—Green said he could not get aft. I sent him forward and ordered him to take the forward lookout for four hours. I directed a close watch to be kept up and distributed the others in a similar manner.

At 4 o'clock others missed their muster. I heard of this with the greatest uneasiness. Where, I asked, was this to end? If the men upon a bright night like this seem mutinous and disposed to undertake the rescue of those confined, on a bad night, in a storm, in the midst of utter darkness, how much greater will be the probability of a rescue? If all suspected should be ironed, would the danger be over? What sympathy might not be felt for the prisoners? These matters crowded upon my mind. I considered the imminent peril which hung over the lives of the officers and crew; I thought of the seas traversed in every direction by merchantmen, unharmed and defenseless; I thought of what was due to the interests of commerce, to the safety of the lives of thousands upon the deep, to the sanctity of the American Flag entrusted to my care, and to my own honor. All these considerations impressed me with the absolute necessity of adopting some farther means of security for the vessel which had been given to my charge.

I took counsel with the First Lieutenant, and was fortified in my purposes by finding his opinion identical with my own.

In so grave a case, involving so many interests and such high responsibilities, I felt desirous of having the opinion of all my officers upon the matter, though not a shadow of doubt remained on my mind of the guilt of the prisoners, should their execution be deemed necessary. I did not forget that the officers were still boys, and that all the responsibility of the proceeding must rest upon the older and higher officers. Still I felt desirous to have their opinion, and accordingly addressed them the following letter:

U. S. BRIG SOMERS, Nov. 30, 1842.

Gentlemen: I am desirous of availing myself of your counsel in the very responsible position in which I find myself placed. You are aware of the circumstances which have resulted in the confinement of Midshipman SPENCER, of Boatswain's mate CROMWELL, and of Seaman SMALL; and I purposely abstain from entering into details concerning them. Necessarily ignorant, as I am, of the extent of disaffection among the crew who have so long been tampered with, and knowing the suspicion which attaches to some of the crew who are at large, I address you and ask your united counsel as to the best course now to be pursued; and I call upon you to take into deliberate and dispassionate consideration, the conduct which will be necessary for a safe continuance of the remainder of our course, and to enlighten me with your opinion as to the proper method to be pursued.

I am, your obedient servant,

ALEX. SLIDELL MACKENZIE, Commander.

Lieut. Gansevoort, and others.

After I had written this letter, but before I had sent it, at about 9 o'clock, Wilson, being foiled in his attempt to get up an outbreak at night, and feeling that he was narrowly watched and was no longer left at liberty, came forward and made some lame and worthless confession, and requested that he might not be put in irons. I told him that if he had made any real confession, in sincerity and truth, he should not be molested; but that it was an insult to his officer to offer him so lame a story as that he had told. Nothing more could be got out of him, and he was immediately put in irons. While on the African coast I knew that he had procured an extraordinary knife, broad in the middle, and running to a point. He had made it very sharp on both sides. It was a singular

weapon, of no use except to kill. He had been seen also the day before sharpening his battle-axe with a file, and had brought one part of it to an edge. This was a thing never allowed or known before on board. McKinley was now arrested. He was evidently the individual in every way the most formidable of all concerned. McKee was also put in irons. They were made to sit down; and when the irons were put on, I walked around the batteries, followed by Lieut. Gansevoort, and made a careful inspection.

On the receipt of my letter the officers immediately assembled and entered upon the examination of witnesses, who were sworn and their testimony written down. In addition to this each witness signed the evidence he gave. In this employment the officers passed the whole day without interruption, and without taking the least food. I remained, myself, in charge of the deck. The officers were excused from watch duty and the watches were so arranged that two in succession fell to me. On the 1st December the First Lieutenant presented me with the following letter:

U. S. BRIG SOMERS, December 1, 1842.

Sir: In answer to your letter requiring our counsel as to the best course to be pursued with regard to the prisoners SPENCER, CROMWELL, and SMALL, we have the honor to state, that the evidence which has come to our knowledge after the most careful, deliberate and dispassionate consideration which the exigency would allow, is of such a nature as to call for the most decided action. We are convinced that in the existing state of things it will be impossible to carry the prisoners to the United States. We think that safety, our lives and honor to the flag entrusted to our charge, requires that the prisoners be put to death, as the course best calculated to make a salutary impression upon the rest of the crew. In this decision we trust we have been guided by our duty to God, to our Country, and to the Service.

Respectfully, your obedient servants,
Lieut. GANSEVOORT, and others.

Com. Mackenzie.

I at once concurred in the justice of this opinion, and made preparations to carry the recommendation into effect. Two other conspirators were almost as guilty as the three singled out for execution: they could be kept confined without extreme

danger to the ultimate safety of the vessel. The three chief mutineers were the only ones capable of navigating and sailing the vessel: by their removal, all motive to capture the vessel and carry out the original design would be at once taken away. Their lives were justly forfeited and the interests of the country, the safety of the sea, and the honor of the flag required the sacrifice. In the necessity of my position I found my law: and in that necessity I trust for justification. I thought it best to arm the petty officers: on this point only the First Lieutenant differed from me; and I found that he was of the same opinion with some of the petty officers themselves;—they said that since I could not tell whom to trust, it would be best to trust no one. I made up my own mind, and judged of the characters whom I could trust and determined to arm them. I ordered to be issued to each a cutlass, a pistol and cartridges. I ordered preparations also to be made for the execution of the three. All hands were called to witness punishment. The whips were arranged, the officers were stationed about the deck, and the petty officers were directed to cut down everyone who should let go his whip or fail to haul when ordered.

I put on my full uniform, came on deck and proceeded to execute the most painful duty that ever devolved upon any officer in the American Navy—the announcement to the prisoners of the fate that awaited them. I approached Spencer and said to him: "You were about to take my life, Mr. Spencer, without provocation, without cause or the slightest offense. You intended to kill me suddenly—in the night while I was buried in sleep, without giving me a single moment to send one word of affection to my wife, one prayer to God for her welfare. Your life is now forfeited: and the necessity of the case compels me to take it. I do not intend, however, to imitate you in the mode of claiming the sacrifice. If there be in your breast one feeling true to nature, you will be grateful for the premature disclosure of your horrible designs. You surely ought to be thankful that you have been

prevented from the terrible deeds you meditated. If you have any word to send to your father, any satisfaction to express to him that you were not allowed to become a pirate, as you ought to do, you will have ten minutes granted in which to write it." Midshipman Thompson was then directed to note the time and inform me when it had expired.

Spencer seemed overcome with emotion. He burst into a flood of tears, sank on his knees, and said he was not fit to die. I repeated to him his catechism, and begged him to offer sincere prayers for the divine forgiveness. I recommended to him the English Prayer-Book, assuring him that he would find in it something suited to all his necessities. Cromwell fell upon his knees, protesting his innocence, and invoking the name of his wife. Spencer declared that Cromwell was innocent and begged that this might be believed. This, I confess, staggered me; but the evidence of his guilt was conclusive. Lieut. Gansevoort said that there was not a shadow of doubt of it. The petty officer said he was the one man from whom real apprehension was entertained. He was at first the accomplice of Spencer, and was then urged on by him, and had been by him turned to his account. I tried to show him how Spencer had endeavored to use him, and told Spencer that he had made remarks about him he would not consider flattering. He expressed great anxiety to know what they were. I told him Cromwell had said of him and another person that there was a "d—d fool on one side, and a d—d knave on the other," and told him that Cromwell would have allowed him to live only so long as he could have made him useful to himself. This roused him, and from that time he said no more of Cromwell's innocence.

Subsequent circumstances made me believe that Spencer wished to save him, probably from the hope that he would yet get possession of the vessel and carry out his original design; and perhaps that Cromwell would in some way affect his rescue. He endeavored at the same time to persuade me that Small was only an alias for someone else, on his list—

though this was proved to be false. Small alone was the one we had set down as the poltroon of the three; yet he received the announcement of his fate with great composure. He was asked what preparations he wished to make. He said he had none: "Nobody cares for me," said he, "but my poor old mother, and I would rather she should not know what has become of me."

I returned to Spencer. I asked him what message he had to send to his friends. He said "None. Tell them that I die wishing them every blessing and happiness. I deserve death for this and my other crimes. There are few crimes I have not committed. I am sincerely penitent for them all. I only fear my repentance is too late." I asked him if there was anyone whom he had injured to whom he could make reparation—anyone who was suffering obloquy on his account? He said "No; but this will kill my poor mother." I did not know before that he had a mother, and was touched by his allusion to her. I asked him if it would not have been far more dreadful if he had succeeded in his attempt —if it were not much better to die as he would than to become a pirate and steep himself so terribly in blood and guilt. He said, "I do not know what would have become of me if I had succeeded." I told him that Cromwell would soon have made away with him, and that McKinley would probably have destroyed them both. He said he "feared this would injure his father." "Had you succeeded," I replied, "the injury you would have done him would have been much greater." If it had been possible to take him home, as I at first intended, I told him that he would have got clear, as in America a man with money and influential friends would always be cleared; that the course I was taking would injure his father less than if he should go home and be condemned yet again escape. Perhaps this is an extreme and erroneous opinion, and not just. But I am merely stating facts—what passed on the occasion. He said that he had attempted the same thing on board the *John Adams* and

the *Potomac;* but had been unsuccessful. He asked if I had not exaggerated the danger. I told him "No; that his attempts to corrupt the crew had been too widely successful; that I knew of the existence of the conspiracy but did not know how extensive it was." I recapitulated to him his acts. He was startled when I told him of his stealing brandy. He admitted the justice of his fate but asked me if I was not "going too far and too fast. Does the law justify you?" said he. I replied that his opinion was not unprejudiced; that I had consulted all the officers and they had given their opinion that it was just—that he deserved death. He asked "what would be the manner of his death." I explained it to him. He requested that he might be shot. I told him that it could not be—that he must be hung. He admitted that it was just. He objected to the shortness of the time and requested that an hour might be given to prepare. I made no answer to this but allowed much more than the hour he asked for to elapse. He requested that his face might be covered. I granted his request and asked him what it should be covered with. He said a handkerchief. In his locker was found a black one which was put on his face. Cromwell and Small made the same request, and frocks were taken from their lockers with which their heads were covered.

Spencer asked for a Bible and Prayer Book: they were given to him. He said, "I am a believer—but do you think that my repentance will be accepted?" I called to his mind the thief on the cross, and told him that God's mercies were equal to all his wants. He kneeled down and read from the Prayer Book, and asked again if I thought his repentance would be accepted, saying that his time was short. I told him God not only understood his case but could suit his grace to it. He begged that I would forgive him. I told him I did most sincerely and cordially, and asked if I had done anything which made him seek my life or whether his hatred was unfounded. He said he thought it was only

fancy. "Perhaps," he added, "there was something in your manner which offended me." I read over to him what I had written down. He wished me to alter the passage in which I said that he "offered as an excuse, that he had attempted the same thing on the John Adams and Potomac." He only mentioned it as a fact, he said.

More than an hour had now elapsed. Spencer, as he met Cromwell, paused and asked to see Mr. Wales. As he passed Cromwell he said not a word of his innocence, nor did he make any appeal in his favor. Spencer said, "Wales, I hope you will forgive me for tampering with your fidelity." Wales replied, overcome with emotion, "I do forgive you from the bottom of my heart, and I hope God will forgive you also." Wales was weeping, and Spencer in passing met Small at the gangway. He extended his hand and said, "Small, forgive me for having brought you into trouble." Small answered, "No, by G—d, Spencer, I cannot forgive you." Spencer repeated his request; Small said, " How can you ask that of me after having brought me to this? We shall soon be before God and shall there know all about it." Spencer said, "You must forgive me, I cannot die without it." I went to Small and asked him not to cherish any resentments at such a time, and asked him to forgive him. He relented—held out his hand to Spencer and said, "I do forgive you, and may God forgive you also."

Small then asked my forgiveness. I took his hand and expressed my forgiveness in the strongest terms. I asked him what I had done that he should seek my life: if I had been harsh either in deed or word to him. He exclaimed, "What have you done, Capt. Mackenzie? What have you done to me? Nothing—but treated me like a man." I told him of the high responsibilities under which I acted; of the duty I owed my Government and the ship with which it had entrusted me; of his offense toward his Commander and the boys he intended to put to death, and of the high duty I owed to the flag of my country. "Right!" he exclaimed, "God bless that flag and prosper it!" "Now," said he, "give

me a quick and easy death." Spencer said to Lieut. Gansevoort that his courage had been doubted; but he wished him to bear witness that he died like a brave man. He asked what would be the signal for his execution. I told him that I was desirous of hoisting colors at the instant to show that the flag of the *Somers* was fixed to the masthead; and that I intended to beat the call to hoist colors and then roll off; and at the third roll a gun would be fired as the signal. He asked leave to give the signal. I at once acceded. He asked if it was the gun under him. I told him it was but one removed. He asked if it would be fired by a lock and wafer. I was told that preparations had been made to fire it with a match; and immediately ordered a supply of live coals and fresh coals to be passed constantly; and then assured him that there should be no delay.

The time was now wearing away. Small requested leave to address the crew. Spencer having had leave to give the signal, was asked if he would give Small the leave he asked. He said yes. Small then said:

"Ship-mates and top-mates: Take warning by my example. I never killed a man but only said that I would do it, and for that I am about to die. Going in a Guineaman brought me to this. Take warning and never go in a Guineaman." Turning to Spencer, he said, "I am ready to die; are you?"

Cromwell's last words were, "Tell my wife that I die innocent; I die an innocent man." From the appearance of this man in assuming to be innocent, it would seem that Spencer took all the risk of the affair, and Cromwell intended to profit by it.

I placed myself where I could take in the whole deck with my eye. No word was given by Spencer. He finally said he could not give the word, and wished me to do it. The word was accordingly given and the execution took place.

The crew was ordered aft when I addressed them. I called their attention to the fate of the young men who had just been hung in their presence. I spoke of the distinguished social position Spencer had held at home, and held up before

them the career of usefulness and professional honor to which a course of faithful duty would have raised him. After having been but a few months at sea, he had criminally aspired to supplant me in a command I had earned by thirty years of faithful service. Their own future fortunes, I told them, were within their own control; I opened to them the stations of respectability and of future honor to which they might rise, but told them that it could only be step by step, in a regular course. I called their attention also to Cromwell's course. He had received a handsome education, and his handwriting was even elegant; but he had also failed through his love of gold. The first $15 he had received from Spencer had bought him, and the hope of great plunder had secured the purchase. An anecdote had been told to me by Collins of Cromwell, which carried its own moral with it, and which I desired Collins to repeat. He did so; he told them that he once went to India with Cromwell, and that they took on board there a keg of doubloons for Mr. Thorndike. Collins alone knew of its being aboard, and kept it a secret till they went ashore. He then told Cromwell of it, who laughed at him, and said that if "he had known about it, he would have run away with the keg." I told the crew they had only to choose between the two—Collins and Cromwell. Small also had been brought up to better things, but had not been able to resist temptation, and had died invoking blessings on the flag of his country.

All hands were then called to clear ship and give three hearty cheers. Three heartier cheers never went up from the deck of an American ship! In that electric moment I verily believe the purest and loftiest patriotism burst forth from the breasts even of the worst conspirators. From that moment I felt that I was again completely master of my vessel, and that I could do with her whatever the honor of my country required.

Dinner was piped, and I noticed with feelings of pain that some of the boys, as they passed the bodies, laughed and sneered at them. I still desired that Spencer should be

buried in a coffin, and gave orders to have one built. But Lieut. Gansevoort offered to relinquish a mess chest he had for that purpose, which was soon converted into a substantial coffin. The watch was set, and the bodies were lowered. They were received by their messmates, to be decently laid out for burial. The Midshipmen assisted in the duty. Spencer was laid out clothed in his complete uniform, except his sword, which he had forfeited the right to wear. I noticed that upon the hands of one of the others a seaman had tied a ribbon, with the name upon it of that Somers who so distinguished himself by his gallantry, patriotism and skill. On Cromwell's face a sabre-cut was visible, and on removing his hair four or five more were discovered; which showed that he had been where wounds were given. He was said to have been in a slaver, and in Moro Castle in Havana; and it was the general impression that he had been a pirate.

A squall of rain soon sprang up, which rendered it necessary to cover the bodies with tarpaulins. They were arranged according to their rank, and all hands were called to bury the dead. The American Ensign was lowered to half-mast. Night had now set in. All the lamps were lit and distributed among the crew and placed in the bows, in the gang-way, and in the quarter boat. The service for the dead was read and the bodies were committed to the deep. The offices were closed by reading that beautiful prayer, so suitable to the occasion, "Preserve us from the dangers of the seas and the violence of enemies. Bless the United States:—watch over all that are upon the deep, and protect the inhabitants of the land in peace and quiet, through Jesus Christ our Lord."

In reading this I sincerely thanked God for the protection of the *Somers,* and felt a firm faith that he would sanction the deed of that day. On the following Sunday, the 4th of December, after the laws for the government of the Navy had been read, according to invariable custom on board the *Somers,* I took occasion to allude to the lessons to be drawn from the fate of those who had suffered. I led the minds of the crew back to their youthful days and showed them how

they had trampled under foot the wise counsel and admonitions of their friends. In Small's locker were letters from his mother, expressing the joy she felt that he was so happy on board the *Somers*. (This was before Spencer had joined.) There was also a Bible, in the leaves of which he had copied some verses from the Sailors' Magazine, in praise of its holy precepts. These verses I read to the crew. I thus showed them how Small valued his Bible, but that he did not resist temptation. I urged them to read it closely and attend faithfully to its precepts. I endeavored to show that there could be no such thing as honest Atheism. I held up before them how Spencer had injured many people, and especially his parents. He had lacked filial piety and piety towards God—two principles which would never have suffered him to go astray. In conclusion, I called on them, as they had given three cheers for their country, now to give three cheers for God—as they would do by singing his praise. The colors were then hoisted, and above the American Ensign was raised the Banner of the Cross—the only flag that ever floats above it from any vessel under my command. The 100th Psalm was sung, after which the crew dispersed. I could not help, on that day of peaceful Sabbath worship, contrasting the condition of my vessel with that she would have presented had she fallen into pirate's hand. Nor could I avoid observing the marked effect produced upon the ship's company by the proceedings. I was satisfied at once that all danger was past and the mutiny broken for ever.

In closing this Report there yet remains the pleasing duty of adverting to the conduct of the under officers. The First Lieutenant, throughout the whole difficulty has borne himself with courage, and sustained a lofty and chivalrous part. Always armed, his pistol often cocked—only in a single instance has any accident occurred; and that arose from the accidental discharge of his pistol while arresting Cromwell. Next in rank to the Commander on board the vessel, he was my equal in the discharge of every duty. Never since the existence of the Union has a commander been more ably and zealously

seconded by a First Lieutenant. Where all behaved so well, it may seem invidious to particularize: yet I cannot avoid reference to the conduct of Purser Heiskell, and Surgeon Lincock. Both were in delicate health, and the latter especially was not in a fit condition to go to sea. He had returned in the Dolphin from the coast of Africa, and had suffered from the fever in the River Nunez. But he did duty through the difficulty. Both obeyed the order to go armed and kept watch without the slightest murmur.

I would respectfully suggest that the thanks of the Department be presented to all the officers of the *Somers*. The opinions they gave were their own; if they were erroneous—the responsibility is not theirs. The opinions, the acts and the responsibility are mine alone and I freely meet that ordeal to which my conduct will undoubtedly be subjected trusting to that consciousness of rectitude in my own bosom which has never for one moment forsaken me, or wavered in the slightest degree.

I submit that J. W. Wales by his coolness and presence of mind and firm integrity, has rendered to the American Navy a memorable service. I had some difficulty with him at Porto Rico; and on that account he was singled out and tampered with; but he remained true to the flag of his country. A Purser's post or a handsome pecuniary recompense would be a small compensation for the services he rendered.

Sergeant Gartry proved himself worthy of the noble corps to which he belonged. He rose from his hammock, where he had been confined by sickness, and did duty through the whole affair; and when this was done his malady returned and he was again disabled. I respectfully suggest that Sergeant Gartry be promoted to a Second Lieutenancy in the Marine Corps. I also recommend the other officers to the notice of the Department. I believe that their promotion will be beneficial to the Navy. If they prove to be unworthy of it, the service they have now rendered cannot be injured by that. It will be remembered in the Navy that when a mutiny occurred and they remained faithful to their trust, their services were not

forgotten; if they prove unworthy of it, this will not be recorded with it.

If it be deemed that I have had any merit for the preservation of the *Somers* from the treacherous toils by which she was surrounded, both since and before her departure from the United States, I respectfully beg that it may accrue without reserve to my nephew, Mr. Perry; and that he be placed in the situation left vacant by the death of Mr. Spencer. I pledge myself for the entire faithfulness and zeal with which he will discharge its duties. For myself, I only ask that, whatever may be thought of the services rendered to the flag of my country, which should be the first considered, my own honor may also meet with due consideration. I ask only that I may not be deprived of my command until I am found to be unworthy of it.

EXAMINATION OF WITNESSES.

James W. Wales. Was Purser's Steward on board the *Somers* in her late cruise. Was informed on the night of the 25th of November last of an intended mutiny on board that vessel. Was standing forward by the bitts when Mr. Spencer came forward, and after some few remarks relative to the weather, requested me to get on top of the booms, telling me at the same time that he had something very important to communicate to me. He commenced the conversation by asking me, "Was I afraid of death—and did I fear a dead man and dare I kill a person." Was very much surprised at these remarks and looked up to see if he was in earnest. He seemed very serious and very much in earnest. I replied that I was not particularly anxious to die quite yet, that I had no cause to fear a dead person and that did a man sufficiently abuse or insult me, I thought I could muster sufficient courage to kill him if necessary. Mr. Spencer replied, "I don't doubt your courage at all; I know it. But," said he, "can you keep a secret? and will you keep one? If so," he added, "take the oath." He then dictated an oath. The purport of which was that I should never make known to any person the conversation which was about to take place between us. I took the oath as directed by Mr. Spencer, by word of mouth, no Bible being used. He then went on to state that he was leagued with about twenty of the brig's company, to take her, murder all her officers and commence pirating. The plan and stations of the men, he said, he had all arranged in secret writing, done up in his neck handkerchief. He requested me to feel of his neck handkerchief. Did so and there was a rumpling which showed that there was paper in the back part of it. He went on to state to

me the plan he should pursue. The affray would commence some night when he had the mid-watch. Some of his men would get into a fight on the forcastle. He (Spencer) was to bring them up to the mast and call Mr. Rogers, the officer of the deck, to pretend to settle the difficulty. As soon as Mr. Rogers had got to the gangway they were immediately to seize and throw him overboard. They would then have the vessel in their own possession. The keys of the arm-chest, he said, he could lay his hands on at any moment. The arm-chest was to be opened and the arms distributed to his men. He was then to station his men at the hatches to prevent anyone from coming up on deck, and he should proceed to the cabin and murder the Commander with the least noise possible. He should then proceed with some of his men to the ward room; and then murder the ward room and steerage officers. He said the officers had no arms in the ward room with the exception of the First Lieutenant, and all the arms that he had there was an old cutlass, which he should secure before the affray commenced.

This accomplished, he said he should go on deck, have the two after guns slewed around so as to command, from a raking position, the deck. He would then cause all the crew to be called on deck, and select a number from them such as would suit his purposes; the remainder he should cause to be thrown overboard. This done, he should commence clearing the deck, beginning by throwing overboard the launch and all the spare spars and rigging of the vessel, as they only tended to lumber up the deck; that should they stand in need of any spare spars or rigging, they could take them from vessels that they would capture.

Then the brig was to proceed to Cape San Antonio, or to the Isle of Pines; and there take on board one who was familiar with their intended business, and who was ready and willing to join them. The name of this person was not mentioned. Then they were to commence cruising for prizes; that whenever they took a vessel, after taking from her that which would be of use to them, they were to murder all on board and scuttle the vessel, so as to leave no traces of her. Should there be any females on board of the vessels they would take, they would have them removed to the brig for the use of the officers and men—using them as long as they saw fit, and then making way with them.

Spencer then called up Elisha Small, seaman on board. He commenced talking to him in Spanish. Could not tell what they were talking about, as I did not understand the language. Small looked surprised, however, at what he told. Spencer then remarked to Small, in English, "Oh, you need not be under any apprehension of fear on his (witness's) account, as I have sounded him pretty well and find he is one of us." Small remarked that he "was very glad to hear it." Small was then called away to execute some order. Before going Spencer told him that he (Spencer) should have the mid-watch that night, and wished to have some farther conversation with him (Small) relative to their plans; and desired Small to "see that foretop-man" meantime.

After Small left, Spencer made overtures to me, saying that if I would join them he would give me the post of third officer in command. He said the Commander had a large amount of money on board, which, with what the Purser had would make a pretty little sum to commence with. He asked me what I thought of the project. Thought it prudent to dissemble as much as possible in order to gain further information, and told him that I was favorably disposed towards it. Spencer remarked that we would have another interview on the morrow, when he would show me the plan he had drawn up. He followed me to the gangway saying that if I lisped a syllable of what he had communicated to me I should be murdered; that if he did not do it himself those connected with him would; that go where I might my life would not be worth a straw. I said "No, I would not make any mention of it." This conversation lasted upwards of an hour—nearly two hours. I took the first opportunity that I could to make the matter known to Commander Mackenzie. It was about 9 o'clock at night when I left Mr. Spencer, and he went below to turn in. It was very light—moonlight, I think. Proceeded as intended to communicate the intelligence to Commander Mackenzie, but I observed Small watching me closely. Thought I would try to get into the ward-room, but there I was again put off; for Spencer put up his head and wanted to know "what the devil I was about, cruising around there," or something to that amount. Spencer's hammock was hung right over the ward-room door, and to reach the door I had to pass by it. Made no reply but pretended to be getting into the Purser's store-room. I then went on the first deck again. One hour after I went again to the steerage and found Spencer still awake. I had returned there with the intention of getting into the ward-room. I saw that the lights were out and that the ward-room gentlemen had retired.

I let the matter rest till morning, but did not go to sleep, though I tried. In the morning, as soon as I could get in, before breakfast (about 7 o'clock I should think), I communicated the matter to Purser Heiskell, and then went on deck and told the First Lieutenant that the Purser wished to see him immediately in the ward-room. I gave the Purser to understand that there was a mutiny on foot, and wished him to get it to the Commander as soon as possible. I condensed Spencer's statement, and went up to the First Lieutenant of my own accord, for fear the Purser would neglect it. I was watched as closely as possible by Small, Cromwell, Wilson, McKinley and Spencer, and therefore kept out of the way of the officers as much as possible. I noticed them clubbing together, and believe they knew I was playing them false. Had no farther interview with Spencer, though I endeavored to do so. He was continually engaged with the fore-castle man—Benj. F. Green—on the foretop, so that I could not see him.

Heard nothing from any of the other men nor did I see anything to implicate them after my conversation with Spencer; though I had on the 26th seen

him talking with Cromwell, Small, Neville, Wilson and McKinley. They were all collected together. Could hear none of their conversation, which was carried on in the usual tone.

Saw Commander Mackenzie and Spencer together on the quarter deck just previous to Spencer's arrest. The Commander told him that he understood he (Spencer) aspired to the command of that vessel; and that he did not know how he could accomplish his object except by riding over the dead bodies of her officers. I heard nothing more of the conversation except that Mr. Spencer said "Yes, sir," and then I was sent away to attend to getting out some irons. That was all of the conversation I heard. I brought the irons on deck. After they were brought up no conversation took place. Spencer's sword was taken away, and the irons put upon him, to which he appeared willingly to submit. At the time the irons were put on, some of the officers were on the quarter deck. The men were at quarters; the officers were all called out—and some of the men, I do not recollect who they were, were stationed at the guns. After he was ironed, Spencer was taken to the larboard arm-chest.

After this I observed dissatisfaction among the men. When an order was given it had to be repeated several times, and even then they obeyed it sullenly, as if they did not care a farthing whether the order was executed or not. Cromwell, whose hammock was slung next to mine, was called by some officer to go on deck, and went muttering. The same evening I observed Wilson, McKinley and three or four others collected on the forecastle talking together: and when the officers went toward them they would separate and go to other parts of the ship.

Next day I noticed nothing suspicious in the conduct of the men, except that they were surly about doing their duty.

In the morning, while holystoning the deck, I being officer over the prisoners, I observed signs passed between Spencer, Wilson and McKinley; they put their hands to their chins and Cromwell, who was lying on the arm chest, rose up. I told him my orders were to shoot him down, and should do so if he did not lie still. He lay down. I then went back with my pistol cocked, to the launch, where Wilson was poking about, and found that he had a number of holystones out and that he was taking out a hand-spike. I told him that if I saw him making any farther signs I would blow his brains out. He said nothing, did not put the hand spike back but went to draw some water. I put the handspike back myself. I expressed my fears to Commander Mackenzie and the First Lieutenant, telling them that I thought it dangerous to leave the holy-stones about, as they might be easily used. I went to the Commander to tell him this. While Spencer was in irons, near the battle-axe rack, I observed him trying how he could work one—moving the axe up and down. Cromwell and Small were at this time confined. After I told this to the First Lieutenant he told it to the Commander and the battle axes were removed to the arm-chest. That morning Wilson, McKinley, McKee and Green missed their mus-

ter and congregated round the stern of the launch. The next day, at morning quarters, they came forward and made some acknowledgement; they were then put in irons; it was then 9 o'clock. After they were put in irons I could see that the men and boys were still surly; they went to work, when orders were given, with evident dissatisfaction This dissatisfaction kept on till the execution, when the whole feeling changed. Those who before had been slow to execute an order were, after that, the first to run to obey it. After the arrest of Spencer and previous to the execution this dissatisfaction was evidently on the increase, so much so as to be perceptible from day to day. More than half the crew, I should think, exhibited it.

Was present at the time of the execution. Did not hear any conversation between Commander Mackenzie and Spencer and Cromwell, though I heard him ask Small to forgive Spencer. Small sat on the gangway. Spencer said "Small, I hope you will forgive me!" Small replied, "Mr. Spencer, how can you ask me that when you have brought me to this?" Commander Mackenzie said to Small, "Don't go out of the world with any hard feelings at your heart—forgive him." Small replied, "Since you request it, sir, I forgive him." Small then bade Lieut. Gansevoort farewell. Commander Mackenzie said, "Small, what have you against me that you will not shake hands with me and bid me good-by?" Small said, "Nothing, sir, only I did not think that you would shake hands with a poor fellow like me and bid him good-by." He reached out his hand, shook that of Commander Mackenzie very cordially, and bade him farewell. I heard Small say, looking up to the flag, "God bless that flag!" He was then adressing his shipmates, having asked permission to do so of the Commander which had readily been granted him. I cannot recollect the words of his address though I heard him warn them from his fate; and heard him say that his sentence was right and just, and that it was right that he should die. He then looked up and said, "God bless that flag!" and asked Mr. Spencer if he was ready to die—saying, "I am." Spencer made no reply at all. He had permission to give the order to fire the signal gun, but waited some time, not being able to do so.

Previous to this Commander Mackenzie told me that Spencer wished to speak with me. I went up to him, and he said to me, "Mr. Wales, I sincerely hope that you will forgive me for tampering with your fidelity."—Commander Mackenzie was standing by his side—I replied that I did, and hoped that God would forgive him. He then shook my hand and said farewell. I had no other conversation with either of them.

While we were at Mesurado, going ashore in the boat, on the 11th of November, Spencer was officer of the boat, and I was with him. I believe Mr. Rogers was also in the boat, thought I am not sure. The Commander had told Spencer before he got into the boat that he was not in uniform. He was just going into the boat as this was said. He muttered some reply, but I could not hear what it was. After we had got some 20 or 30

yards from the brig the Captain hailed us and asked if we had the American ensign in the boat. Spencer replied that he had not got it, and added (not, however, so the Captain could hear) that he'd "be G—d d—d if he was going back after it either, for the d—d old humbug. Go to h—ll." He continued cursing all the way to shore—though I cannot call to mind the particular expressions that he used. Spencer's remarks seemed to please the crew.

About two weeks before the mutiny, while bound from Mesurado to St. Thomas, Mr. Spencer had the watch on deck, Mr. Rogers sung out let go some brace. Spencer was talking with Cromwell (who was boatswain's mate of the watch), and some others of the crew. None of them paid any attention to the order. Mr. Rogers called out again and again. They paid no attention. Mr. Rogers then came forward and gave the order himself. They were as near Mr. Rogers as I was and could hear as well. Capt. Mackenzie, who was on deck, noticed it, and sent for Spencer to come aft. I did not hear the conversation between them, but when Spencer came forward he was muttering curses against the Commander. I asked him: "Spencer, what's the matter?" Said he, "The Commander says that I don't pay attention to my duty, and urges me to pay better attention hereafter. G—d d—n him, I'd like some of these dark nights to catch him on top of that roundhouse, and plunge him overboard. It would be a pleasing task for me, and (he muttered between his teeth), G—d d—n him, I'll do it yet." I made no reply. He went forward and began talking with some of the men—four or five. I went below. I did not repeat this language to any of the officers. Other officers were near and must have heard his words.

At Madeira, when we were getting under weigh, Cromwell spoke against Commander Mackenzie. The Commander asked why some rigging had not been attended to. Cromwell was forward and the Captain went aft. Cromwell then said he "did not care a d—n about the rigging: Captain Mackenzie was desirous of getting too much work out of the crew; that there was no necessity of getting under weigh that night at all," at the same time wishing "Commander and the brig farther in h—ll than they were out." This he said loud enough to be heard by all forward. Shortly after we left New York, Cromwell, while giving some money to the Sergeant of Marines to take care of, told me that Spencer had given him $15; he mentioned no purpose, though he said something about its being a "pretty good present." Spencer also drew some $15 or $20 worth of tobacco and cigars during the cruise, which he distributed to the crew—the tobacco rather to the boys than the men. He gave Cromwell a bunch or two of cigars at one time, and also to Small. I saw him give money to Small at Santa Cruz, while going ashore. I saw two silver pieces, though I could not see how much there was. I have seen Spencer give Green and Van Velcher a pound of tobacco at a time, and to others smaller amounts.

The PRESIDENT informed Com-

mander Mackenzie that he had the privilege of cross-examining the witness, by question in writing, to be approved by the COURT.

The *Commander* handed the following questions:

Did you ever hear Cromwell speak of his wife? I have. Two or three days after we were out we had a heavy gale. Cromwell came down and began to speak about friends at home. He spoke of his wife in a very light manner for a man who has just been married, at least. [The words he used indicated that he cared nothing for her chastity while he was gone.]

The *Judge Advocate* asked why Com. Mackenzie wished to ask it.

Com. Mackenzie said it was merely to counteract any feeling of sympathy that might be sought to be drawn from his wife and family.

The *Judge Advocate* said that purpose was already sufficiently answered.

Did you hear Mr. Spencer make any remark about dead men tell no tales? I did. He said that his motto was "dead men tell no tales." He alluded to this in connection with what he said of scuttling vessels that he might capture.

Was anything said about "small fry" and "eating biscuit" in that conversation? Yes, sir. He said that they would eat considerable, and that he would make them walk the plank; they would be useless on board. He meant the small boys—the smaller apprentices. There were some very small on board.

What effect, if any, did Mr. Spencer's remark about throwing Com. Mackenzie overboard have upon the crew? It rather pleased them. I saw smiles upon the faces of several of them; Cromwell and Small were among them.

What was the conduct of Commander Mackenzie generally during the difficulty on the *Somers*? He appeared to labor under no fear, was humane, and did everything he could for the comfort of the prisoners.

During the continuance of the difficulty on board the *Somers* did you observe any conduct in Commander Mackenzie exhibiting unmanly fear, a despotic temper or any quality unbecoming a commanding officer and a gentleman? NO! SIR, I did not.

December 31.

J. W. Wales. Cromwell, when the vessel first sailed from New York, was very tyrannical toward the apprentices, having no conversation with them, and keeping aloof from them altogether; and when called upon to inflict punishment he would strike with all his might, as though it was pleasing to him to whip them. He whipped them hard, the same as though they were men instead of boys. Have frequently heard Commander Mackenzie censure him for whipping them so hard, and he has often ordered him to stop. Just previous to our arrival at Maderia I noticed a sudden change in his manner toward the boys: he then "made free" with them, and let them talk and play with him and pull him about. When Mr. Spencer gave the tobacco to the men and boys he would say that if Capt. Mackenzie would not let them have it *he* could accommodate them. Have seen Mr. Spencer several times throw money upon the deck —a shilling or so—and tell the boys to scramble for it. Crom-

well and Small frequently told of having been in slavers. Cromwell said he had been taken in a slaver, carried to Havana and confined in the Moro Castle. He was there for some time and was finally liberated by a woman who had considerable influence with the Governor of the Island.

Between New York and Madeira the crew was very good indeed; but after we left Madeira for Santa Cruz it could be seen that dissatisfaction was arising, and it continued to increase during the whole interval up to the execution of the men. I noticed a change instantly after that. Those who had been the most surly immediately turned about. The treatment, after leaving Madeira, was the same as it had been before.—The same rules and regulations were enforced and the same duties were performed.

I saw the paper purporting to be the list of persons engaged in Spencer's plans the night it was taken out of his locker.

Lieut. Guert Gansevoort. Was First Lieutenant on board the brig *Somers*. There were on board the following officers—twelve in number, viz: Commander Mackenzie, First Lieut. Gansevoort, Dr. Lincock, Purser Heiskell, Acting Master Perry, Midshipmen Rogers, Thompson, Hayes, De Long, Tillotson, Spencer, and Mr. Oliver Perry who did Midshipman's duty.

In the morning of the 26th of November at about 10 o'clock I met Mr. Wales at the fore-hatch. Was told by him that the Purser wished to see me. Went down to the ward-room and found Mr. Heiskell. He asked me if I was aware that a plot existed on board to take the vessel out of the hands of her officers and murder them all? I told him no. He (Heiskell) told me that Mr. Spencer had taken Mr. Wales on the booms between the hours of 6 and 8 of the previous evening, and had there, after swearing him, made known his plot. He told him that there were twenty men concerned with him in the plan of taking the vessel out of the hands of the officers. The plan was to make a row on the forecastle in his mid-watch, and then to call Mr. Rogers to quell the disturbance. They were then to seize and throw him overboard—to go aft and enter the cabin, and murder the Commander and officers. Was anxious to make it known to the Commander, and did not stay to hear all he had to say. I immediately entered the cabin and mentioned the circumstances. He received it with great coolness—said that the vessel was in good discipline, and expressed his doubts as to the truth of the report. I asked him if I should see Mr. Wales myself and get the information from him. He said no—he did not wish me to do so, or to say anything about it, but ordered me to keep a strict look out upon Mr. Spencer and the crew generally, which I did. About dinner time I missed Mr. Spencer from the deck. This was about 2 o'clock. I discovered that he was in the fore-top, and immediately went up to see what he was about. He was sitting on the lee side of the top, with his chin resting on his breast—apparently in deep thought. He did not observe me till I had got into the top and was standing erect. He raised his head, and as soon as he discovered me got up and evinced some confusion. He asked me

some questions about the rigging, and about the foremast head. Asked him if he didn't dine. He said he didn't care about it just then. Came on deck and left him in the top. About an hour after that I discovered Green in the top with him. He appeared to be engaged in pricking India ink in Spencer's arm. The crew were employed in slinging clean hammocks. I hailed the top and ordered Green to come out. Mr. Spencer put his head over the top-rail, and, from his manner I thought he wished Green to remain, though he asked no question. I repeated the order, and then ordered Spencer to send Green and other men that might be in the top on deck. Green came down immediately but no others. Spencer remained in the top. Had not ordered him to come out. Saw no others in the top. I ordered Green to sling his hammock. He answered that he had done so already. I was engaged in mustering the men for the purpose of having the hammocks stowed. When I got abreast of the Jacob's ladder on the starboard side forward, I observed Mr. Spencer sitting on the ladder. I turned my eye towards him and immediately caught his eye, which he kept staring upon me for more than a minute, with the most infernal expression I have ever seen upon a human face. It satisfied me at once of the man's guilt. Reported the circumstances to the Commander, and told him that I thought something should be done, in order to secure him. He replied that he would keep a sharp look out—that he did not wish to do anything hastily: and that by evening quarters he would decide what it was best to do. Just before the drum beat to quarters, he asked me what I would do if I were in his situation as Commander of the vessel. I told him that I would bring that young man aft (alluding to Mr. Spencer) and iron him and keep him on the quarter deck. He told me that that was the course which he intended to pursue; and that he was very glad to find that I agreed with him. Directed me to order all the officers aft except one, which I did—leaving Mr. Hayes forward on the forecastle. When the officers had assembled aft on the starboard side of the after deck, the Commander said to Mr. Spencer, "I understand that you aspire to the command of this vessel. How you are to arrive at it I don't know, unless by walking over my dead body and those of my officers." I think Mr. Spencer said, "No—it's all a joke." The Commander said, "It's a very serious joke, sir, and one which may cost you your life. Do you deny having had frequent conversations with Small and Cromwell?" I thought Mr. Spencer appeared confused. He said, "No—it was all a joke." The Commander asked him if he had not a paper concealed in his neck-handkerchief. He replied "no." His neck-handkerchief was then overhauled, and there was nothing found in it. The Commander then ordered me to iron him. I laid my hand upon his sword, disarmed him, and ordered him to come out from among the officers. He did so and I ordered a seaman doing the duty of armorer to bring up the irons. Mr. Spencer commenced rolling up his sleeves as if to bare his wrist,

and was first put in hand-irons. When these were on I asked him if he had arms concealed about him. He said he had not, but perhaps I had better overhaul him, as he supposed I would not believe anything he said. I searched him but found nothing except a few scraps of paper. The Commander ordered me to arm the officers of the deck with two pistols each—and, I think, with cutlasses. The orders were, if Mr. Spencer attempted to make his escape or to communicate with any of the crew, to blow out his brains. I told Mr. Spencer these orders.

The next day in the morning I had a conversation with some of the men. The Carpenter's mate Dickerson said "that big fellow forward is more dangerous than the rest; he ought to be confined." I asked him whom he meant, and he said Cromwell, the Boatswain's mate.

In the afternoon of that day in looking aloft I saw Cromwell, Small, Wilson, Golding, and some others, whom I had previously suspected of being engaged in the plot collected about the mast-head and in the cross trees. Cromwell, who was generally very noisy and blustering on occasions of that sort, now said very little; I do not recollect hearing his voice. The men seemed to have gone aloft more for conversation than for work. A short time after the Commander said he thought it necessary to confine Cromwell. I told him I agreed with him, and that I believed him to be a dangerous person.

As soon as he came upon the Jacob's ladder I cocked my pistol and pointed it at him, and when he got on deck I told him the Captain wished to see him. He was told by the Commander that he would be confined in the same way with Mr. Spencer, and taken home, where he would be tried by the laws of his country and acquitted if he was innocent; if guilty he would be punished. He replied, "Yes, sir; but I don't know anything about this; I assure you that I don't know anything about it." Something else passed, which I do not at this time recollect. The Commander then said something to me about Small, and asked if I did not think it best to confine him. I told him I thought it was, and he then told me to order him aft. Nearly the same conversation then passed as with Cromwell. The Commander told him he would be confined as the others were, brought home and tried. Small did not deny having had conversations with Spencer. The Captain said to him, "Spencer has talked with you about the plot," in which Small acquiesced and said, "Yes, sir." Small was then confined in irons. All the officers were armed when Cromwell first came down from the rigging; and were stationed about the mast on different parts of the deck ready for action in case of any attack. They wore their arms afterward until their arrival here.

On the 28th or 29th, Wilson, McKinley, McKee and Green were confined. Wilson had had a knife in a bag, which he bought on the coast of Africa, and King told me that the night before he had kept it concealed about the guns. I came up and found King and Dickinson talking together. King said to me

"Has Wilson drawn two or three knives from the store-room lately?" I told him none that I knew of. He said, "I heard that he had several knives in his sail-bag, and I think it would be a good plan to over-haul it; he has had his gab there at the after part of that gun where Mr. Spencer is, nearly all day, and a knife hid away in the rigging," which he thought he intended to put into the hands of Mr. Spencer. I overhauled the sail-bag, and found no other knife than an African dirk, very sharp, and having the appearance of having been lately sharpened.

I had several conversations with King, Dickenson, I think Browning, and Anderson, Captain of the forecastle; and they all thought Cromwell the most dangerous man concerned in the plot. They told me what they had seen—that before the affair they had seen Cromwell talking frequently with Spencer; that they were very intimate.

January 3, 1843.

Commander *Mackenzie* handed to the COURT a communication of which the following is the substance:

May it please the Court. As in all the mutinies that are on record it appears that they have been provoked by gross tyranny on the part of the commanding officers, it seems proper that I should be allowed to show that no such circumstances existed in this case. The mutiny on board the British frigate *Hermione,* during the French Revolution, grew out of no disloyalty on the part of the mutineers, but was provoked by a long course of grievances; and although the principal offenders were executed, the grievances were afterwards redressed by the action of the proper Court. The mutiny grew out of the systematic cruelty of the Captain, and was provoked immediately by an act of cruelty, which resulted in the death of two men. The mutiny on board the British frigate *Bounty* grew out of the brutality of the Captain and directly out of an insult to one of the officers. That which arose among the crew of the French frigate *Medusa* was provoked by the gross weakness and incapacity and want of calmness of the commanding officer. It concerns me, therefore, and my professional honor to show that there has been on board the *Somers,* and of every vessel I have had the honor to command, no cruelty, no disregard of the comfort or the feelings of any of the crew, no weakness, no incapacity which could provoke or encourage any of the crew to this act of mutiny. My object in this application is to state that Lieut. Charles Henry Davis, who has been for two years upon the same vessel with myself—is now in the city and on his way to Washington upon urgent public business. And my wish is to request that after the testimony of Lieut Gansevoort is closed, Mr. Davis may be examined.

The *Judge Advocate* said that as nothing could be done about this until Mr. Gansevoort's testimony should be closed, and as he wished to say a few words concerning the principle

involved in the application, he thought the application itself should be postponed until that time. The COURT assented.

Lieut. Gansevoort. On the morning of the 1st, the day on which the men were executed, Commander Mackenzie ordered me to arm all the petty officers whom I thought to be true to the flag. He had expressed a wish that they should be armed before, but not having myself full confidence in them, I had until now discouraged it. On that morning I obeyed the order and armed the petty officers that were true; there were seven of them. I had no means of telling whether the officers were true or not except by judging from my conversation with them, and this in a great measure removed my suspicions that they were not true. The orders of Com. Mackenzie to the officers were, that if they saw an attempt made to rescue the prisoners, to blow out the brains of both prisoners and those making the attempt; if they saw the prisoners forward of the mainmast and in communication with the crew, they were to destroy them; they were to keep a watchful eye upon the crew, and if they saw any mutinous attempt they were to use their arms upon them. He then ordered them forward. A letter was addressed by Commander Mackenzie to the officers and sent the day before, the 30th, ordering us to give him our opinion as to the guilt of Spencer, Cromwell and Small and as to the best course to be pursued. We collected in the ward-room where we spent the day in examining witnesses. About 6 o'clock, I think, the Commander ordered me to break up the Council, as he considered the vessel in danger and wished to show a force about the decks. In examining the witnesses I administered an oath of which I have a copy, and took down the testimony as they proceeded. After hearing them read three of those who could write signed the depositions — those who could not, made their marks. The original minutes are in the hands of Mr. Helskell, the copies are in the possession of Com. Mackenzie.

The investigation was continued on the next morning at about 9 o'clock. On the previous day we examined eight or nine of the crew, I believe. Most of them were petty officers: some from among the apprentices whom I suspected to be concerned in the plot. The Commander was exceedingly anxious to know the result of the investigation, which occupied not a great while the next day. I was not present during the whole of it, it being necessary for me to be on deck. The witnesses examined on the second day were not the same as had been on the day previous. As soon as the Council came to a decision, I repeated the result to the commander, telling him that I would hand it to him in writing as soon as it was published. I told him what opinion we had come to, and that it was unanimous. He expressed a wish that the letter we were drawing up should be put immediately into his hands. He read it and showed it to Midshipman Spencer. I was not near enough to hear the reply

which Mr. Spencer made to Com. Mackenzie's remarks. When I saw them again Mr. Spencer had a Bible in his hand and the Commander was seated near him with a paper upon which he appeared to be writing. The Commander had detailed the different men who were to take the men under the main yard, on which they were to be executed. He told me that the two of the highest rank were to take Mr. Spencer.

I went up to Mr. Spencer, who took my hand in both of his, and begged me very earnestly to forgive him for the many injuries he had done me. He said he did not object to the sentence—he thought it was right and that his punishment was just. He said that he deserved death but did not like the way which the Commander had chosen to put him to death; or words to that effect; and added that he should have been glad to have a longer time to prepare. They were then taken to the gangway; Mr. Spencer and Small in the starboard gangway and Cromwell in the larboard. While I was standing in the gangway near Small he asked me if I would bid him good-by, and if I would forgive him. He told me that he was guilty and deserved his punishment. I think the Commander said to him, "Small, what have *I* done to you that you won't bid me good-by?" Small replied, "I did not know that you would bid a poor bugger like me good-by sir." I think the Commander asked him if he had ever treated him badly or something to that effect and told him that he was sorry he had to take the course he did but that the honor of the flag and the safety of the crew required it—or something to that amount. To which Small replied, "Yes, sir, and I honor you for it; God bless that flag!"

Mr. Spencer then asked Small if he wouldn't forgive him. Small replied, "Ah, Mr. Spencer, that's a hard thing for me to do. For you brought me to this." The Commander said, "Forgive him, Small; don't go out of the world with any hard feelings in your heart." Did not hear Small's reply, but went to the other side of the deck.

Cromwell was sitting on the hammock cloths with the whip around his neck. I bade him good-by. He asked me to forgive him, and seized my hand, grasping it very violently. He said that he was innocent, and hoped that we'd find it out before six months; or words to that effect. I then went over into the starboard gangway again, and Mr. Spencer called to me. Mr. Spencer said, as near as I can recollect, "You may have heard that I'm a coward, and you may think that I'm not a brave man. You can judge for yourself whether I die like a coward or a brave man."

Small asked permission to address the crew. The Commander gave permission, and he said: "Mess-mates and Ship-mates:—I am no pirate. I never murdered anybody, but I only said I would. Now see what words will do. Take warning by me." He said that his punishment was a just one. Mr. Spencer had asked permission to give the order to fire the gun. The Commander gave him permission. Mr. Spencer afterwards told Browning, the Boatswain's mate, who was holding him in the gangway that he had not power to give the order, and wished the

Commander to give it. The Commander immediately gave the order, 'fire,' or 'stand by—fire'—I forget which. I sung out 'whip,' and the men were run up the main yard; the whips were belayed, and the order given to pipe down and pipe to dinner. Previous to the men going to dinner the Commander asked how I thought it would do to give three cheers; I told him I thought it would do well, as it would be easy perhaps to tell from that among those who were left who were wrong and who were right. When the men assembled aft he told them to give three cheers for the American flag, which they did, and hearty ones they were.

Went to dinner, and after the prisoners had hung about an hour the Commander ordered me to deliver them over to their respective messmates and have them decently laid out. After they were laid out, the Commander and myself walked round and inspected them. They were afterwards sewed up in hammocks, and Mr. Spencer laid in a coffin which had been made from two mess-chests. They were buried by candle light—on the second day watch—at about 7. It had been squally in the afternoon, and we had covered the bodies over with tarpaulin.

Had a conversation with Mr. Spencer some time after he was confined, two or three days after, I think. He commenced by saying that he had formed this plot on board of every vessel he had been in—both in the *John Adams* and in the *Potomac*. He said he knew that it would get him into difficulty—that he had tried to break himself of it—but it was impossible: it was a mania with him. I think he wished me to mention it to the Commander. I did so—though I think not immediately.

The *Judge Advocate*. Was there any change in the conduct of the crew after the execution from what it had been before? There was, sir. I think orders were obeyed with more alacrity; and there was less sullenness than there had been before in the manner of some of the men.

Judge Advocate. Had you observed any change in the general conduct of the crew—and at what time did it take place? Before we reached Madeira their conduct was very good, but after leaving there the crew were very slack, and I had frequently to drive them to their work. They would frequently disobey small orders, such as putting clothes away, etc., and this continued to increase up to the day of execution. Before, if I told them to put away an article of clothing they would do it readily; after that they paid no attention to it.

Judge Advocate. After their arrest what circumstances led you to think a rescue was intended? The men whose names were in the paper found in Spencer's locker, were McKinley, McKee, Green, Gildeman and Sullivan, and some others I do not recollect; I had seen looks passing between Mr. Spencer and McKee, McKinley.

Judge Advocate. Was the conduct of the rest of the crew after the arrest of Spencer, Cromwell and Small, improved or otherwise? Otherwise, decidedly; and from them I drew my conclusion that a rescue was intended. They continually hovered about the mainmast, collecting in knots and talking to-

gether on the forecastle and in gangways, and often separating on my appearance, and never talking so that I could hear. So far as I could judge it was and is my firm belief that an attack and a rescue were intended.

Judge Advocate. Have you the list that was taken from Spencer's locker, and were you present when it was found? I was present when it was taken. It was found on the night when Spencer was confined; in his locker, contained in a paper looking-glass case furnished with a drawer was a razor-case which I opened and saw inside such a piece of paper as comes around razors and inside of that paper was the list. No razor was in the case. This was the list found in the case. [The names were in Greek characters]. Mr. Spencer had told me that he had an alphabet of his own which no one else could read. I showed the list to the Commander immediately, but not to Mr. Spencer till some days after. I had previously told Mr. Spencer that these papers had been found. He answered that he presumed so. A smaller piece of paper, with several names written on it, among them Roberts, was found in the case; but as none of the names were those of officers on board, I thought it had no connection with the matter.

Commander Mackenzie. After the discovery of the intended mutiny and before the examination of the ringleaders, was the *Somers* in a condition to go into action with any prospect of sustaining the honor of the American flag? No, sir, I do not think she was, and I should have been very sorry to have had her make the attempt.

Commander Mackenzie. From what you observed and knew of the spirit and feelings of the crew and of the progress of the mutiny up to the time of the execution of the ringleaders, did you then, or do you now believe that the *Somers* could, or could not have been safely brought into port unless the ringleaders were executed? I did believe that she could not have been otherwise brought into port, and I do believe so now. I think she never could have reached port in the hands of her officers, if the execution had not taken place. I thought so then; I think so now.

Did you distinctly recollect that the Commander gave orders to blow Mr. Spencer's brains out, or to put him to death, if any rescue was attempted? The language I used was my own. The Commander's orders were to destroy them—to put them to death. He did not tell me to give the orders to blow out their brains. But I passed the order in that form because these were young officers, and if an attempt were made to rescue the prisoners I felt the importance of putting them to death. I thought that if the shot was wasted, and the prisoners only wounded and taken forward, this might excite and drive on the mutineers to the accomplishment of their purpose. My object was to have them killed at once that those who were attempting the rescue might see it and be deterred from their object. My purpose was to save shot—(as we had none to waste), and at once to destroy the dangerous persons.

Commander Mackenzie. Did you see in the Commander or

any of the officers of the *Somers*, during the difficulties, any traces of unmanly fear, of a despotic temper, or any qualities unbecoming an American officer? I saw nothing of the kind. The conduct of the Commander throughout the whole was of the most unexceptional character, and I consider the country fortunate in having had such a Commander, a man of so much decision, at such a time and under such circumstances of responsibility and danger as then existed. Too much praise cannot be awarded to all the officers.

January 4.

M. C. Perry. Was on board the *Somers* on her late cruise, in the capacity of Acting Master. The discipline on board, after leaving Madeira, was good until reaching Porto Praya—after which time, until the execution of Midshipman Spencer, it was not so good. The elder portion of the crew were surly and morose in their manner. Orders had to be repeated several times before they were obeyed. It daily grew worse until the execution. I first heard of the intended mutiny immediately after evening quarters on the 26th of November, the same evening that Spencer was arrested, and while they were putting the irons upon him. The log-book contains a true and faithful account of the occurrences of that voyage. Nearly all the entries are in my handwriting. They were entered at the end of each sea-day. The book has not been out of my possession, nor have any alterations been made in it, since that time.

I heard the Commander tell Cromwell that he allowed him ten minutes to live, and that he should then hang him to the main yard-arm. Cromwell said, "I am innocent—Lord of the Universe look down upon me!" I went forward to my station. The whips were taken aloft and secured, two to the starboard yard-arm and one to the larboard. In about an hour I saw the prisoners brought forward to the gangway. I then saw Spencer and Small speaking to each other, but heard nothing. They were then lifted on the hammock netting and the ropes secured to their necks. The commander then told me that Mr. Spencer would give the order to fire the gun, and directed me to have live coals at hand in case the match would not go, and also to make the crew clap on with both hands to the whips. I obeyed all these orders, and told the crew not to let go, but when they got forward to stand still and hold the rope till ordered to belay. The Commander soon after called out "Stand by." I took the apron off the gun—drew a pistol and cocked it thinking that some of the crew would attempt a rescue. He then gave the order "fire." The gun was fired, the prisoners run to the yard-arm, and the ensign and pennant hoisted. All hands were called to cheer ship, and three hearty cheers were given to the American flag. They were then piped down and piped to dinner. In about an hour the watch were called, and orders given to lay out the dead for burial. This was done and at 6 o'clock that evening all the lanterns were lighted and distributed. I was ordered to see that the crew had their prayer books and respond-

ed. The dead were buried according to the Episcopal forms —all hands were piped down and the watch called. The same orders were passed respecting the four prisoners that were left, as had been before concerning the three. Nothing more happened till we arrived in the United States.

Previous to the arrest of Spencer, heard Mr. Rogers report Green disobedient several times. There was a great falling off in the discipline previous to the arrest: parties of the crew mustered together in different parts of the ship. Mr. Spencer's familiarity with those suspected and his keeping aloof from his messmates were also noticed. I knew of his giving Small tobacco. This familiarity was chiefly with Cromwell, Green, Warner, and Small, and others whom I do not remember. He was continually laughing and joking with them in a manner not usual with officers. This had attracted my notice before the arrest. A short time before he was often sitting on the forecastle having marks pricked in his arms and breast. I sometimes spoke to him about it in an indirect way, to which he only replied that he meant to have it done, though perhaps he should be sorry for it. He seemed surly towards his messmates and smiling to the men. Never heard from him, Cromwell, or Small any declarations as to their intentions.

After the prisoners were confined, I was led to believe that a rescue was intended by the facts that those whose names were upon Spencer's paper were continually about the main-mast in sight of the prisoners, and collected in knots about the vessel; that they did not obey their orders with the same alacrity as previous to the arrest of Mr. Spencer; and by the general disposition of those found upon the paper.

When the men were collected in knots, they never permitted me to hear what they were saying, though sometimes they would speak up loudly upon some other subject. Their manner on such occasions was very unusual. After the arrest and before the execution, the insubordination, so far as I could judge, was on the increase. It grew worse daily,— and after the execution the change was very marked; the discipline was then as good as I had ever seen it.

Commander Mackenzie. Was the duty of the *Somers* conducted with regularity—did we fire at targets with great guns and exercise with the broad sword, etc., and was the *Somers* in an effective condition? We did, and the vessel was in an effective condition.

Commander Mackenzie. Was attention paid to health and general education? Yes, sir; more than I had ever seen on any other occasion. I know of no navy regulations which were not perpetually enforced on board the *Somers.*

Commander Mackenzie. Do you know of any place on board the *Somers* where three prisoners could be kept in safety beyond the reach of rescue from the crew? I do not, sir.

Commander Mackenzie. At the time of the execution did you, or do you now believe, that the *Somers* could have been brought into port if the execution had not taken place? I did not then think so, and I have

been confirmed in the opinion since. I think now that she could not have been brought into any port if the execution had not taken place.

H. M. Heiskell. I was Purser on board the *Somers*, and first heard of the intended mutiny on the morning of the 26th November, from Mr. Wales, who came into the ward-room and said to me, in a low tone, that Spencer had on the evening previous revealed to him the plan of the mutiny. The officers were all to be murdered, and he was to be appointed third officer on board, and the vessel was to be made a Pirate. He did not say much to me, as he was afraid of being seen talking to any of the officers. He wished me to make the matter known to Mr. Gansevoort. I replied that, as soon as he should come into the ward-room, I would do so. He soon came in, and I told him of it. Through the day, the communication between Mr. Gansevoort and Mr. Wales was through myself. The matter was made known to the Commander by Mr. Gansevoort. Through the day I made known to Mr. G. facts as they came to my recollection, and he repeated everything to the Commander. In the evening, while the Doctor and myself were in the ward-room, we were called on deck, and immediately afterward Com. Mackenzie came up to Mr. Spencer and addressed him as has been already stated. Mr. Spencer acknowledged that he had aspired to the command but that it was only in joke. He was then placed in double irons. Three or four weeks before this I saw Spencer tear up a piece of paper in the ward-room, upon which were written secret characters—though what they were I could not tell. From the remarks made then I think by Mr. Spencer himself, I knew they were secret characters, though I could not see them. The paper was about as large as half a sheet of letter paper and there were a number of lines upon it. About ten days before the plot was discovered, Mr. Spencer and myself were standing by the forward hatch, when he commenced speaking about piratical vessels; and remarked that if he were on board of one he would cruise on the Spanish Main and would make it a rule never to chase a vessel if there was another in sight, and (I believe) never to attack one unless he were certain of overpowering her. I think he added that he would not carry any spare spars or sails, but supply himself from the vessels that he might take, and that he would destroy all traces of the vessels taken. When he wished to retire from that line of life he said he would mislead his men when on shore by going in a contrary direction from the one he would tell them he intended to pursue. I do not remember what led to this conversation.

I had no conversation with Spencer, Cromwell or Small before or subsequent to the arrest; nor with any other of the crew, touching the alleged mutiny. The crew consisted of one hundred and twenty persons, of whom seven were officers in the steerage, including Mr. Spencer, four in the ward-room, and the Commander. There were eight petty officers, and four rated as seamen, making twelve, nine ordinary seamen, six landsmen, and seventy-four apprentices, rated

as boys, making in all one hundred and twenty. The boys were rated in three classes, according to their capacity.

Commander Mackenzie. How much tobacco, cigars and soap did Mr. Spencer draw from you during the cruise? From Sept. 12 to Nov. 26 he drew 725 cigars, 11 pounds of tobacco and four bars of soap. This was a very unusual quantity—much more than any other officer drew, except of soap.

Commander Mackenzie. As Purser, do you know whether the Commander took pains to see that the provisions served to the crew were of good quality; and if so, can you remember any circumstance illustrative of the fact? I can. While at Monrovia the supply of bread was small. I found there was some hard bread to be had there, and took a sample of it to the vessel. In the afternoon I received an order from the Commander to purchase as much as one of the cutters would carry. When it came on board it was found not to be equal to the sample and was thrown overboard.

Commander Mackenzie. Did you believe and do you now believe that the *Somers* could have been brought into port if the execution had not taken place? I thought then and still think that there was great danger every moment that those persons were on board.

Commander Mackenzie. Did you observe in the commander or other officers an indication of unusual fear, a despotic temper, or of any qualities unbecoming an American officer? No, sir.

January 5.

Commander Mackenzie then submitted the following request to the Court:

May it please the Court: As all the mutinies on record have been provoked by injustice towards the crews or by gross tyranny or incapacity on the part of the Commanding Officer, it concerns me to show that no such causes existed on board the *Somers.*

The mutinies in the British fleet during the wars of the French Revolution grew out of no disloyalty, but long continued grievances, which, although the ringleaders were executed, were afterwards solemnly redressed.

The mutiny of the *Hermione* was occasioned by the systematic cruelty of her Captain, and broke forth in consequence of an act of barbarity which occasioned the death of two of his men.

The mutiny of the *Bounty* grew likewise out of the brutality of the Captain to both his officers and men. It was directly provoked by an outrageous insult to one of his officers.

The mutiny among the shipwrecked crew of the French *Medusa* was occasioned by the incapacity and want of calmness of the Commander and his officers. It therefore concerns my professional honor to prove that on board the *Somers* and the other vessels I have had the honor to command, there has been no cruelty, no disregard for the personal comfort or for the feelings of those under my command, none of the weakness or incapacity which might

provoke insubordination, or give it encouragement to go on: no want of humanity.

This evidence is rendered more necessary by a statement having gone the rounds of the newspapers, as I am informed, that I was cruel and oppressive on board the *Independence* as First Lieutenant and as acting Commander of the *Fairfield*. It has been said by the Court that it has nothing to do with what is stated in the newspapers —but the press is a great manufactory of public opinion, the fabric which it produces is of very various quality; but no American can claim to be indifferent to it. Public opinion has been let in to act upon this whole matter, and willing as I am that my whole conduct should be laid before the world, I am glad that the Court came to this decision.

I am prepared therefore to prove that as 1st Lieutenant of the *Independence* I was opposed to punishing myself, and that all the punishments in that ship were inflicted by order of the Commodore himself until it became too irksome to him, and of his own motion he devolved the greater part of it on me; that as Commanding Officer of the *Dolphin* I enforced the law of Congress which restricts the power to punish to the commander alone, and requires it to be inflicted by his order and in his presence, at a time when the practice of flogging by the first lieutenant and the officer of the deck was universal in the service, as it continued to be until the circular of Mr. Secretary Paulding, requiring the rigid observance of the law of Congress on this subject, was issued.

I am prepared to prove that both in the *Dolphin* and in the *Fairfield* I was attentive to the rights, the comfort and the happiness of my crews, and that they were eminently orderly, cheerful and contented; that both these vessels were in high order and efficient men-of-war.

As my humanity may be impeached on account of the transactions which the Court has under consideration, I am prepared to prove that when the Brazilian City of San Salvador was entered by storming by the imperial troops; and the insurgents within the town, expecting and deserving no quarter, were firing the city and resisting in every direction, I got the *Dolphin* under way from her anchorage near the British and French cruizers, and crossing the fire of one of the batteries and an imperial cruizer that was attacking it, brought the *Dolphin* to anchor under the walls of the town opposite the residence of the American Consul, received him on board with his family, and gave refuge to all who fled on board of her from the sanguinary onset of the assailants, from the conflagration and its drunken and desperate perpetrators.

I am also prepared to prove that on the termination of the civil war in the Oriental Republic of when the Constitutional Government was overthrown and Ribera was about to enter the city of Montevideo at the head of a horde of ferocious Indians, I gave refuge on board the *Dolphin* to more than twenty individuals, including several high officers of state, who were deeply compromised, abandoned to the females of their family the exclusive use of my cabin, and conveyed them to a place of safety.

That in like manner in the *Fairfield* I withdrew from threatened death at Buenos Ayres, several individuals, compromised for political offenses, and that I did this without forfeiting the favorable regard for myself and for my country, of the authorities of Buenos Ayres, conciliated by the energetic measures which I had taken to resist the attempt of the French Admiral to encroach on our neutral rights, and to extend the rights of belligerents beyond the limits assigned to them by the laws of nations.

These various facts I am prepared to prove by witnesses now in attendance on the Court, and who have urgent calls of duty at a distance from New York. If it be the pleasure of the Court, I would be glad that these witnesses should be now examined and suffered to depart.

CAPTAIN STEWART said that so far as any testimony related to occurrences on board the *Somers*, or as to his conduct on board that vessel, it was admissible; but no other testimony could be received by the COURT, as they were restricted to an inquiry into the occurrences on board the *Somers* and could not travel beyond it.

The *Judge Advocate* said that was his opinion also, and he most fully concurred with CAPTAIN STEWART. Those witnesses of Commander Mackenzie's therefore who were not required to testify as to what occurred on board the *Somers* could be discharged.

Dr. Lincock. Was on board the *Somers* as Passed Assistant Surgeon. First heard of the intended mutiny on the evening of the 26th November, when I was called on deck at evening quarters. The Commander then accused Mr. Spencer of an intention to seize and take the vessel out of possession of the officers. He also accused him of having a conversation with Mr. Wales on the subject. He acknowledged that he had such a conversation with Mr. Wales, but I believe he said it was in jest. Was one of the Council who examined witnesses and we came to the conclusion that it would be eminently hazardous to attempt to carry the prisoners home, for fear of a rescue being made and the vessel seized. On the morning of the 26th Nov. Small presented himself to me to go on the sick list, complaining of nausea and vomiting. I put him on the list and gave him some medicine. The same day Mr. Wales' evidence on Mr. Spencer's case, came to my knowledge, implicating also Small. The next morning Small again presented himself, when I saw the sick, and still complained of vomiting. From his appearance, tone of voice, and the quivering of his hand when I felt his pulse, I perceived he was laboring under manifest fear and anxiety. I then made some inquiries of persons on the deck

as to whether he had been seen to vomit or throw up his food. Nobody having seen him do so, and believing he was feigning sickness, I refused to keep him on the list longer and discharged him. Don't think the disorder he complained of would have produced the effects he showed. He never requested any medical aid after his arrest, and although I had my watch over the prisoners, I never saw him in want of any. I never heard any conversations, tending to show whether there was a mutiny or not on board the *Somers*. The grounds which induced me to form the opinion that a rescue was to be attempted, and that the execution was necessary, were, that there were a great many prisoners on the quarter-deck, and I did not know how many more were leagued with them among the crew; and also from the testimony I received from the seamen examined before the Council, who thought they were very dangerous characters. Thought also that the men were dilatory in stirring and performing their duties during the time the whole of the prisoners were in irons on the deck. This, I think, disappeared entirely after the execution.

Commander Mackenzie. Was the Commander attentive to the comfort of the sick, and did he ever ask you to send for food from the Captain's table for those in delicate health? He was uniformly attentive, and I recollect his sending food from his table to the sick.

Commander Mackenzie. Did the Commander, in every port, ask you to make requisitions for fresh fruit for the sick and crew, and did he show a desire to save the public expense in other ways? I think in every port we went he desired me to make requisitions for fresh fruit and such other articles as would administer to the comfort of the sick.

Commander Mackenzie. Was there any unnecessary punishment on board the *Somers*, and was the punishment of the crew cruel or humane? There was no unjust punishment, and the punishment of the crew was humane.

Commander Mackenzie. Do you believe that from the arrest of Spencer to the execution the *Somers* could have been taken into action with a prospect of honor to the American flag? I do not.

Commander Mackenzie. Do you believe that the *Somers* could have been brought into port by her officers if the execution had not taken place? I think it would have been eminently hazardous—almost impossible.

Midshipman Henry Rogers. Was senior Midshipman on board the *Somers* during the last cruise, and first heard of the mutiny on the 26th of November, immediately after the arrest of Mr. Spencer. I assisted in searching Mr. Spencer's lockers, where they found the razor-case with the paper in it, with writing in Greek characters, of words in English. This was a list of his accomplices, headed certain, doubtful, and those to be retained on board *nolens volens*. There were also three explanatory paragraphs. These the first Lieutenant took, and I shortly afterward deciphered them for the Commander. Between 3 and 4 o'clock on the 27th, I heard the officer of the deck give the order to set the sky-sails, and shortly afterwards take them in again, when the top-

gallant-mast was carried away. I went on deck, and saw Cromwell, Small, Wilson and several others in Mr. Spencer's list, collected about the main-top-mast head. They were out of their stations, and were not usually zealous on such occasions, and it therefore struck me that they had gone aloft either for the purpose of plotting or putting in execution some previously formed plot. As soon as it became dark the First Lieutenant armed each of the officers with pistols and a cutlass and stationed me at the lee gangway, with orders to watch that rigging strictly, as he expected they would come down that way. They however came down the weather rigging and Cromwell and Small were arrested and confined in irons as soon as they came on deck. Mr. Spencer was a messmate of mine, and messed in the steerage. The day before his arrest he came up to me where I was sitting in the steerage and asked me abruptly if our chronometer was a good one. I told him I did not know, but supposed it was a very good one. He then asked me if I knew the rate of it. I replied that I did not, and he dropped the conversation. Two or three weeks previous to his arrest he was speaking of fortune-telling, and said that he could tell fortunes. I asked him if he could tell mine by examining my hand. He said he could, and having examined my hand he told me that my death would be a violent and sudden one, my life would be short, and that I would be a gambler. He told Midshipman Thompson's and Mr. Delonde's fortunes at the same time in my presence, but I do not recollect what theirs was. He was in the habit of speaking very disrespectfully of the Commander in the steerage but was much too obsequious in his presence. I remember his saying that if the Commander should have another S to his initials, it would spell his character. He seemed to be the most familiar with Cromwell, Small, Green and McKee, and with most of those whose names I subsequently found on his list. He was frequently conversing with them when he was on duty during his watch—laughing and talking with them in a more familiar manner than became an officer or gentleman. This familiarity had attracted my attention previous to my discovery of the mutiny, and I had made observations on it to my messmates. He was on my watch, and was not attentive to the duties on deck. I frequently had to give orders several times without their being obeyed, and was often under the necessity of going forward myself to put my own orders in execution. On each occasion I generally found him either standing by himself or talking to some of the crew. He was morose and quarrelsome in his disposition, so much so that none of his messmates would have more to do with him than was unavoidable. He associated more with the crew than he did with his messmates. His manner to the crew was the same as to his messmates. Have heard Mr. Spencer make use of mutinous expressions towards his commander among the crew previous to his arrest, but don't remember the words. The discipline of the crew on our arrival at Madeira appeared to be very good. After leaving there, until the arrest of Mr. Spencer, the state of the crew was growing

worse, and also till the execution. The elder part of the crew would collect together in knots about the vessel, and were slow to obey the orders of the officers. Their looks were sullen. If an officer approached one of these knots, they would sometimes remain together and their tone of voice would become louder.

The Judge Advocate. Are these the letters found in the razor case in Mr. Spencer's locker? They are.[1]

Seplain	*To be nolens volens*
II Spencer	*Sibble*
E Andrews	*Slremel*
Δ M'kenlu	*Sxoll*
U 'ales	*Van Bruvl*
	Smith
	Usllmore
	Gazelu
Δoulrul	*Blaxuell*
Usllson +	*rodman*
M'kee +	*Xlarx*
Uarnor	*Xnenles*

Greev	*Xelevn*
Gednev	*Selsor*
Van Velsor	*Xornen*
Sullivan	*Δixensor*
Godfrey	*Θe Δoxler*
Gallia +	*Garrebranx*
'ouard +	*Uall'am*
Ueel - - -	*M'Xee*
Arm x'esl - -	*M'Xenlu*
Xa3iv - - -	*Spenxer* *Small* *Usllson*
Uard roum -	*Spenxer*
Sleeraye - -	*Spenxer* *Small* *Usllson*

Θose doulful, marxed + uill xrobablu βe indxed lo Goin, βefore θe progexl is xarried inlo exekulion. θe remainder of θe Doulful, uill xrobablu Goin uen θe θing is done; if nol, θen musl βe forced.

If anu nol marxed doun, uis' lo Goin afler is is done, ue uill nix oul θe βesl nd disnose of θe resla.

[1] This is a translation. Those marked certain are E. Spencer, Andrew, McKinley and Wales. Doubtful—Wilson , McKie , Warner , Green , Gedney , Wilzer, Sullivan, Godfrey, Gullia , Howard.

To be kept *nolens volens*. Sibble, Strummer, Scott, Van Brunt, Smith, Whitmore, Gazeley, Blackman, Waltham, Rodman, Clark, Nevers, Selzer, Corning, Richardson, the Doctor, Guevan.

Those marked doubtful, with a cross opposite their names, will probably join before the plot is carried into execution. The remainder marked doubtful will probably join when the thing is done, if not, they must be forced.

Any not marked down who may wish to join after the thing is done, we will pick the best out and dispose of the rest.

Wheel—McKie.

Arm chest—McKinley.

Cabin—Spencer, Small, Wilson.

Ward room—Spencer.

Steerage—Spencer, Small, Wilson.

All the names found in this list, except Andrew, were on board the *Somers*.

January 6.

Midshipman Thompson. Was on board the *Somers* during the late cruise. Previous to hearing of the mutiny I had observed the conduct of Mr. Spencer to be singular, and too familiar with the men for an officer. I have known him to send the apprentices down to his locker for tobacco. I heard him speak disrespectfully of his Commander, previous to his arrest, among the midshipmen, but not among the crew. He told my fortune, but I do not remember what it was. I heard him tell Midshipman Rogers he would die a gambler. I noticed his familiarity with the crew generally; I think he was most so with Green. I noticed Cromwell's manner to be very singular previous to his arrest. It changed very much from what it was in the earlier part of the voyage. I sent for him one day about some duty, and when he came he fixed his eyes on me and gave me one of the most singular looks I ever saw; his whole soul seemed to be in his countenance. It continued until I had told him what I had to say, and he then appeared to be relieved. I noticed that Small was surly previous to his arrest. Mr. Spencer, on the passage between Madeira and Porto Praya, asked me if I did not think the *Somers* could be easily taken. He said a person could go in the cabin and murder the Captain without detection. He also asked me about pirates rendezvousing in the islands in the Pacific, and whether a vessel could not go in there and refit. The discipline of the crew fell off after leaving Madeira, and grew worse until the execution, when it immediately became better. I was induced to think the execution was necessary from the testimony given before the Council, the gathering of the crew in groups, their sullenness, the confident manner of the prisoners, their interchanging glances with one another, etc. When they collected in groups there were 3 or 4 in a group. I am 21 years of age, and entered the service in 1837.

Commander Mackenzie. Do you know of any place or apartment on board the *Somers* where three persons could have been kept beyond the reach of rescue from the crew? No, sir.

Midshipman Hays. I was on the *Somers* during her last cruise. I am 20 years old, and entered the service 12th March, 1838. I first heard the mutiny on the 26th November, in the evening. Previous to his arrest, on my making some casual remark to him, he said I should have occasion to remember the name of Spencer some day. He never held any conversations with me about piracies or the Isle of Pines. Never heard him make use of mutinous expressions among the crew. Have heard him speak very disrespectfully of the Commander among his messmates, but don't recollect the words. I have heard him say he was a d—d humbug. His conduct previous to his arrest was, that he seldom associated with his messmates except at meal-times; he was morose and quarrelsome in his temper. I did not use to go forward much, and do not know of his habits of association with the crew. He was most familiar with Cromwell, Wilson, Green and McKee. I have often seen him talking with Cromwell, but I supposed it was on professional

matters. The subordination and conduct of the crew was good between New York and Madeira. After that, there was a great falling off in the attention to duty of some of them. Up to the arrest of Mr. Spencer it grew worse, infinitely. I remarked it in Cromwell, Green, Wilson and Golderman. It indicated itself by inattention to duty, and an inclination to be disrespectful. I did not see any material change after the arrest up to the time of the execution, except the talking in groups. I heard none of their talking. I saw them from the quarter-deck. The crew performed their duty as cheerfully as I ever saw them after the execution. I was one of the council of officers, and united in the letter to the Commander advising the execution of these men. From the testimony received before that Council, I was led to believe that the efficient and greater part of the crew were leagued together to effect a rescue of the prisoners, and the fact of carrying away that mast and the general demeanor of those who were confined the day previous to the execution and of others who were out of confinement, their general manner and appearance, I was led to believe that the safety of the *Somers* depended upon the execution. I heard Spencer ask Small to forgive him, and Small replied, "No, by G—d, I can't forgive you, Mr. Spencer, you have brought me to this end." The Commander then came up and told Small he had better forgive Spencer, and Small then said, "I do forgive you," and gave him his hand. Small also requested permission to address the ship's company, which was granted. He said, "Shipmates, take warning by my fate. I am not a pirate, I have not killed anyone, this is because I said I would do so." Heard Cromwell protest his innocence about an hour or an hour and a half before he was executed. Mr. Spencer, some five or six days before his arrest, showed me the drawing of a brig with a pirate's flag. This was in the steerage. It had a black flag, with a skull and bones. Two or three days before Spencer was arrested a strange vessel was in sight and we beat to quarters and cleared for action. Cromwell said "there was a d—d sight of humbug about this vessel, he had been aboard vessels where shot was fired and there was not so much humbugging." This was addressed to some of the crew.

Mindshipman Delonde. Was acting Midshipman on board the *Somers* during her late cruise. Am 17 years old, and have been a year in the service. Mr. Spencer told me when we were off Cape Mesurado that he should like to have command of a brig like this—would cruise off the West Indies for slavers. I never heard him talk of pirates or piracies or the Isle of Pines, or of taking the *Somers*. He showed me a brig which he had painted. It was not the *Somers*, but an hermaphrodite brig. I don't remember whether it had any flag. The *Somers* is a full rigged brig. I never heard him make use of mutinous expressions against the commander. I have heard him abuse the commander; he said if he had his own way with him he would dismiss him from the service. The crew were very prompt in obeying orders and in good dis-

cipline until we reached Madeira.

John H. Tillotson. Was acting Midshipman on the *Somers* during her last cruise. Am 16 years of age and have been in the service about four years. Previous to Spencer's arrest I had heard him say that he had characters to write, which nobody could understand but himself. I saw him writing on a piece of paper the night before he was taken, and he said he would not have it seen by anyone on any account. I think he put it in his locker when he had done. When we were bearing down upon the brig *America* before our arrival at Madeira, he said he should like to have the launch full of armed men and take possession of her. I have frequently heard him call the Captain a humbug, but I do not know that it was in the presence of the crew. He was in the habit of associating more with the crew than his messmates, and have known him to give tobacco to the apprentices and cigars to the men. He was most on terms with McKinley, McKee, Green, Scott, Cromwell and Small. I have seen him talking privately with Small and Cromwell. I recollect Mr. Spencer striking me because I did not relieve him quick enough, and I struck him back.

Oliver H. Perry. Was Commander's Clerk on board the *Somers*, and doing duty as a Midshipman. Previous to Mr. Spencer's arrest, I had heard him say that he expected to command a vessel of his own shortly. I think it was about two weeks before his arrest, the First Lieutenant and myself were talking together, and Mr. Spencer said this in the presence of Mr. Ganse-voort. I have also heard Mr. Spencer speak very disrespectfully of the Commander—once when going ashore at Mesurado. While we were at Mesurado, there was an Italian slave dealer there whom Mr. Spencer went to see; there were three or four of us there; and I heard Mr. Spencer say that he had derived a deal of information from him. I think he was as intimate with the men as with his messmates. Cromwell, Small, McKee and Green he appeared most intimate with. He would often send McKee down to his locker to get tobacco. I know he bought a box of cigars when he first came on board and gave them to be distributed among the men.

Sergeant Garty. Was on board the brig *Somers* doing duty as master-at-arms. First heard of the mutiny on the evening of the 26th Nov., after Mr. Spencer was confined. On the passage between Madeira and Teneriffe, I was sitting on the combings of the main hatch, and Mr. Spencer came up and asked me if I was to go ashore to do duty, wouldn't I be reduced to the ranks? I told him, no, sir, unless I committed crime. He asked me then if I was not made sergeant for the purpose of going on board the brig to do duty as master-at-arms; and I told him I was. He then changed the discourse by saying she was a fine vessel. I said she was, and he said at the same time that he could take her with six men. I told him he could not do it with three times six. He said provided he knew where everything lay as well as I did, and the keys of the arm-chest. He went on to describe how he could take her. —First he would secure the Cap-

tain, and officers; then take possession of the arms, turn up the crew, and he made no doubt as soon as they saw his men in arms they would give in to him. I told him then that after the crew had been turned up they could rush on him, and before there might be 6 killed we could throw him and his 6 overboard, and that he must think us a poor crew to think he could take it with 6 men —oh no, or something like it, he muttered out as he went away. On or about the 6th Nov. I heard Mr. Spencer ask Cromwell how he would like to sail with him. Cromwell said he'd like it well. About the 20th, as I was sitting on the combings of the fore scuttle, there were a number of the crew standing by, and Cromwell in front of Mr. Spencer. They were talking about one thing or another, and the Army was introduced by someone, and I asked Mr. Spencer if it would not be better for him to go in the Army than the Navy. He told me that his father told him he would get him a Lieutenant's commission in the Dragoons; that he thought he wouldn't like it, and he thought he was not going to be long in the Navy. He said he was going to have a vessel of his own shortly.

January 7.

Sergeant Garty. Mr. Spencer asked me a few days after about the arms, whether they were all loaded. I told him they were with the exception of 6 or 7 muskets. He asked me why they were not all loaded, and I told him they would not fit in the arm chest if they were pointed all aft. He asked how they were situated in the chest, and I told him those that were loaded were pointing aft and those not loaded pointed forward. He asked me if they were all primed and I told him none of them were. He asked me the same question a day or two after I believe. I don't recollect any further conversations with Mr. Spencer till he died. Saw Small and Cromwell in close conversation together, and I went aft and asked Cromwell if he knew anything about Mr. Spencer's going to take the brig. He said not, as also did Small, whom I asked the same question. After Mr. Spencer was arrested the iron chest was taken off the berth deck into the ward-room. Mr. Gansevoort gave me the key and told me to see that there was no clubbing on the berth-deck. The next morning, Mr. Gansevoort ordered me to put Waltham, the ward-room steward, in irons, which I did. When the council was held in the ward-room I was examined before it and stated what I knew and gave my opinion of the situation of the brig. Being of opinion that Spencer could not take the brig himself, gave me also suspicions that Cromwell and Small were implicated. They were also melancholy and in bad spirits as if something laid on their minds. I gave my opinion that the brig was in danger of being taken by Spencer and his associates after the arrest. I was asked whether if they were put to death I thought the brig would be safe, and said I thought she would. I believed then and I believe now that there was danger of a rescue after Spencer, Small and Cromwell were arrested. I believe there were persons at large who would have attempted a rescue if an opportunity had occurred. If

such an attempt had been made after the arming of the officers and petty officers, I believe it might have been successful in case the officers of the watch were only on deck, for the petty officers might be up aloft.

Captain Mackenzie. Is it your opinion from all you know or saw that a majority of the apprentices were acquainted with the plot and hoped to benefit by it? A number of them were, but I can't say whether a majority were.

Charles Stewart. Was on board the *Somers* during her last cruise, and was captain of the forecastle. I did not hear of the mutiny on board the *Somers* before Mr. Spencer was arrested. I had often seen Mr. Spencer talking with Cromwell previous to his arrest. They appeared to be very intimate. I have seen them talking on the forecastle and on the Jacob's ladder in a low tone of voice, so that I could not make out any of their discourse. I have been standing within five or six feet of them, and could not hear what they said, both by night and by day. I have seen them talking together a number of times, I can't say how often. I was sworn and made a statement before the council of officers on board the *Somers*. The opinion I gave before that council was that the vessel was not safe while the prisoners Cromwell, Small and Spencer were on board. My reasons were because of the number of men confined and the few men there were on board the vessel to guard them. There must have been more of the crew than those arrested who had something to do with it, but cannot say who they were.

Charles Rogers. Was on board the *Somers* during her last cruise as Quarter-Master. The first I heard of the mutiny was on the night Mr. Spencer was confined. Before we got to the coast of Africa Mr. Spencer said to me that he wished he had the launch and ten such men as he could pick out from the crew, and he would make his fortune. This was when a brig was bearing down towards them. I said, then I think your intent must be for taking the brig which was in sight, and he said yes. I told him it would be hard to find ten men of the crew to take that vessel. He said yes, he could find ten men, and then mentioned the names of some of the crew and asked my opinion about them. Some of the names were Wilson and Cavanaugh, and McKinley and Green; that was all at that time. One night he asked me if I had been in a slaver, and I told him no. Cromwell and Small were the only ones of the crew that understood navigation, so far as I know. Cromwell told me that Spencer had given him $15. I was examined before the Council and gave my opinion that it would not be very safe to try to come to America with all the prisoners on board. We had but few men, and the small boys would be a good many of them on the sick list as the cold weather was coming on, while, so far as I could understand, most all the older boys were engaged in the plot. I thought the older boys were engaged in the plot because I heard from Mr. Ganse-voort that most of their names were found on Mr. Spencer's list as going to join him. I had not seen anything in their behavior myself to lead me to such an

opinion, on account of my being most of the time aft, and not associated much with the boys. I do not believe that the *Somers* could have been brought safely into port if those men had not been executed. I thought so then and think so now.

January 9.

William Collins. Was on board as Gunner's Mate, and, after the confinement of Cromwell, as Boatswain's Mate. The discipline of the crew up to our arrival at Madeira was very good; from that time till the arrest of Mr. Spencer it was very bad. They were slack in performing their duty, and we had to run about to make them do it. I was on the quarter deck, and had to run about and act as Boatswain's Mate to see that the boys did not skulk. The state of the crew from the arrest to the execution was about the same as before, but rather worse if anything. The men used to be talking together about the decks in groups of 4 or 5, and at the same time looking aft toward the prisoners. After the execution the discipline was better; the men became attentive to their duty, and obeyed orders. Was examined before the Council of officers and was asked if I thought the ship would be safer with those men out of the ship. I said I thought she would.

Mr. Browning. Am Boatswain's Mate. My opinion was asked whether I thought it would be safe to try to bring the brig in with three prisoners, and I told them I thought not; I thought it unsafe, because in dark nights and squally weather the officers might be engaged taking in sail, and it was hard to tell who were engaged in it or not, and it would be easy in a dark night for a parcel of men where the officers were running about the deck, for each man to pick out his mark, stick his knife in him, and after killing all the officers but the Commander, it was easy to take command of the vessel, and not only that, but I do not believe there was a man forward except those three capable of taking charge of that vessel. There were none more capable of taking charge of that brig than I am of a balloon. Cromwell and Small understood navigation, and I have seen them working it. None others of the crew but those three did. My opinion was asked whether I feared a rescue, and I told them I did. I also said that the cooks about the galley were as much to be feared as any men about the ship, as they were as big or bigger than any and never aft the deck. Do not believe Spencer was seaman enough to sail the brig without the assistance of Cromwell and Small. I do not think he knew a dozen ropes aboard of her.

Andrew Stevenson. Was captain of the forecastle. When the mast was carried away, I was ordered aloft, and found Cromwell, Small, Golderman and Wilson there doing nothing but talking. Asked them several times for assistance but received no reply from any of them. Our treatment on board was middling good: and it was my decided opinion that if the execution had not taken place the brig could never have been brought to port.

Henry King. The discipline was very bad after the arrest and up to the execution. The larger

boys seemed to hang back, and were very unwilling to go aloft. I watched them closely, and they seemed to hang about the decks. I observed a great many things during the time that caused me to have suspicion. I observed Wilson stow away an African dirk about gun No. 5—that is the after gun on the larboard side, and Mr. Spencer was confined on that side close by that gun. I found, also, two handspikes and three heavers which I had stowed away amidships under the boats and where I thought nobody could get at them, had been taken back to where I had removed them from.

Do not believe the vessel could have been brought safe into port by her officers had the execution not taken place; I don't think that had we been taken in a heavy squall, we could have saved the masts. The crew gathered about the decks, and we did not know who were engaged in it, and when we went aloft and left the officers on deck we were afraid there might be a rush made and the officers knocked down one after the other as easy as could be. I feared a rescue would be made very much, and was afraid to turn into my hammock at night. The men were about the deck and we did not know who to trust. I thought then and do now, that had any confusion occurred a rescue would have been attempted. I think that such an attempt would have been successful if made, though the officers were armed. We had to go armed when we went aloft. After the arrest and previous to the execution we could not get much rest; we did not get our usual rest; I was afraid to go to sleep I had such a dread on my mind; I never unbuckled my arms from me, and slept with them from the time they were given me until our arrival in New York off the Navy Yard.

Thomas Dickerson. I have often noticed Spencer and Cromwell talking together; for the last ten or twelve days every opportunity they could get they were talking together. It was in a very low tone of voice. I have been close by without hearing them. One night it had just gone three bells and I saw two persons in under the booms by the galley pipe. I passed them and then went forward and then turned about to see who they were. I found it was Mr. Spencer and Cromwell and another man the other side of the pipe that I could not tell who it was. They never altered their position till I went aft, which was in about fifteen minutes.

January 10.

Thomas Dickerson. Was carpenter's mate. The conduct of the crew generally led me to suppose a rescue would be attempted. I once carried a couple of single sticks to store in Cromwell's store room and told him they belonged to the First Lieutenant, and he said he did not care a d—n, they should not stay there. On my leaving the store-room, he said, "your time's d—n short." Another time he had a rule which was broke, and he said that one of the carpenters had broken it. I told him they had not, it had got broken in the chest, and as I was going up the ladder he said, "G—d d—n you, I'll fix you." Another time he had a stick of wood up in both hands and was going to knock a boy's brains out with it. He threw

one stick and missed the boy. He then took up another in both hands and swore by G—d Almighty he would drive it through his heart if he was swung on the mainyard the next minute. The boy settled down on his knees, calculating to receive his death wound. I interfered and he stayed his hand, and then he repeated to me that "my time was d—n short."

William Newell. Am an apprentice and rated by Captain Mackenzie as ordinary seaman. The discipline was good to Madeira. I saw little difference from that time till the arrest of Mr. Spencer, except that Cromwell behaved better to the boys than he had done before. From the arrest till the execution the greater part of the crew seemed dissatisfied, and gathered about the decks talking about Spencer, Cromwell and Small. They said they thought it was not right to put them in irons. Previous to Mr. Spencer's arrest, between Madeira and Cape Mercerado, he told me he should soon have a vessel of his own, and asked me if I would not like to sail with him. I told him I didn't know. He also asked me if I did not think Captain Mackenzie was very hard in flogging the boys.

Saw Mr. Spencer and Wales talking together on the booms the night before Mr. Spencer was arrested. I should think they were there two hours. I did not hear what they said. I also saw Small come up and speak to them. I saw Spencer show Cromwell a paper about two weeks before his arrest, by the store-room door on the berth deck. It appeared to be about half a sheet of letter paper He appeared as if he was pointing with his pencil and explaining something to Cromwell. There were marks with a lead pencil on the paper. It was not common English letters, but looked like crosses, or something like it. I could not tell whether it was only writing or only marks Mr. Spencer had been making.

I could not swear that the paper I saw at the Commodore's was the one I saw in Spencer's hand, but it has the appearance of it, and I believe it is the same.

I have heard Cromwell say he had been in a slaver, and in a prison for being in one. I have never heard Cromwell or Small talk about pirates. I have heard Small say he had killed a negro, and would kill more. I have heard Mr. Spencer say to Cromwell that the *Somers* would make a fine slaver. When Spencer asked me if I did not think the Commander flogged the boys too much, he called him "a d—d son of a b—h."

I have heard Spencer say he would throw the Captain overboard the first time he could get a chance. It was after we left Madeira, and I believe when the Captain had been reprimanding him for neglect of duty. It was said, as he was coming forward, not to any one person particularly. There were five or six of the crew around. He was generally in a passion when he abused the Captain, but not always.

Peter Tyson. Am in my 19th year. Was third class apprentice on the *Somers* and this was my first voyage. The first I heard of the mutiny was a conversation the night before Mr. Spencer was put in irons. I was laying aft on the spar deck, be-

tween the 4th and 5th guns to the leeward side, about 7 o'clock in the evening, and Wilson and McKinley came aft. Wilson had his battle axe in his hand and a sharpening stone and no hat on. McKinley said to Wilson he had just told me that we have spies and we had better be careful. Wilson replied no, he need not fear that; he knows me and knows who I am, and that I have been in too many scrapes. McKinley then said to Wilson, "Would you join them?" He answered, "He would not mind it." McKinley then said, I don't know, I think I would rather go on a regular slaving expedition, for there they had $25 a month and prize money, and when we got to St. Thomas we would be fitted out. It was against the orders to lie on the leeward side of the vessel and they had come up to me and saw who I was before they began this conversation. Had a pea jacket on. I was drowsy, and I think they thought I was asleep. I had gone there to try to sleep, and I laid still till this; and I then asked McKinley what was that he was saying about a slaver? He replied that he was talking about a slaver that left St. Thomas, and had been gone about three months, and had taken three or four vessels. He said she was fitted out with about as many guns as the *Somers*. I said I had heard of a slaver being fitted out there; and he said it was a free port, and they were often fitted out there. There was nothing said about pirates, only McKinley said, "He would rather go in a regular slaver."

Mathias Gedney. Was seaman on the *Somers;* an apprentice. I am 20 years old, and have been over five years in the service. I heard a conversation between Cromwell and Spencer on the passage between Porto Praya and Monrovia. It was between six and eight o'clock in the evening, on the starboard side of the forecastle. They were talking in a low tone of voice and I was only about three feet from them. I could only hear part of what they said. I heard Mr. Spencer say he would try that plan—if he succeeded well and good, if not, he'd burst. I don't remember that Cromwell made any answer, and Spencer turned and went away. They were talking about a voyage to the Northwest Coast. A few evenings after I heard Spencer say to Cromwell he hoped he would not forget what he had spoken to him about. Cromwell said, "Oh, no, sir," and walked away. I remember once that Collins was telling us how he had been on a vessel with a quantity of money on board, and he was the only one who knew it and told the Captain where to find it. Cromwell said, "It would not do for him to have that chance for he should be off with it."

George W. Warner. Was Captain of the forecastle on the *Somers.* Am an apprentice and have been five years in the service. Once heard Spencer ask Cromwell what kind of a slaver the brig would make, and he said she would make a good one. Never heard them talking together at any other time but have frequently seen them together.

Mr. Spencer has never said anything to me about taking the brig. He never asked me if I had been in a slaver, and never asked any of the boys in my

hearing or said anything to them on the subject. After Spencer, Small and Cromwell were put in irons I did not think any attempt would be made to take the brig. After Mr. Spencer was put in irons, I thought there was a mutiny on board and that there were others concerned in it. I didn't know then who to think was concerned in it. After Cromwell and Small were put in irons I thought both of them were concerned in it: I thought so from Cromwell's intimacy with Mr. Spencer, and his general character.

January 11.

George W. Warner. Have been a prisoner since the mutiny. I suppose Spencer intended to take the vessel to the Northwest coast, because he had often said in my hearing that he liked that country the best. Heard Cromwell say he had been in a slaver and had been taken prisoner. I said to the Council that I had no doubt Spencer intended to take the vessel, from what I had heard among the crew. I had heard the carpenter say that he had seen Spencer talking with Cromwell out of sight of everybody, and from that, and hearing the Captain, when he flogged Waltham, read off part of the plot, I believe Spencer intended to make the attempt.

Charles Van Velzer. Have been a prisoner since my arrival here. I was Captain of the Foretop on the *Somers*. I am eighteen years of age, and have been four years and some months in the service. Spencer never conversed with me previous to his arrest. I have often seen him talking with Cromwell at the fore hatch, always on the weather side; it was always by themselves, and in a low tone of voice. I never heard them, but once, and that was on the forecastle. I then heard Spencer tell Cromwell that he should like to have a vessel to go out on the Northwest coast with, and he thought he could raise money enough to get one. Cromwell said he was well acquainted with the N. W. coast. That was all I heard. Mr. Spencer was most familiar with Cromwell and some of the small boys —Scott, Strammels, Blackman, Gazeley. He was most intimate with Cromwell. I believed that if there was any plot Cromwell was concerned with Spencer, but I did not know of any plot. I thought there was a plot because Spencer and Cromwell were so intimate, and what I had heard on the forecastle. I think the brig could have been brought safe into port without executing those men. I thought so at the time, and I think so still.

Edward Fowler. Am fifteen years of age. I was in Cromwell's watch. Mr. Spencer never had nothing to say to me, nor Cromwell, nor Small. I have very often seen Spencer talking to Cromwell alone, every evening, and sometimes all day; it was in a low voice. They would talk sometimes a couple of hours together, and sometimes more. One evening I heard Cromwell, when on the Jacob's ladder, ask Small if he had ever been at the Isle of Pines. Small said no, and Cromwell said he had been there once in a man of war, and it was a very nice place. Cromwell said as how as there was a good many men of war's men and pirates there, and he then said never mind, we'll soon see the times when we'll see it again.

Small never spoke to that. That's all I heard them say then; I had to go forward to the forecastle. I have often seen Cromwell and Small talking together.

James Dunn. [Objected that the court could not receive his testimony, as he was a negro. The COURT was thereupon cleared for consideration, and on its reopening he was recalled and sworn, after having been questioned by Commodore STEWART as to whether he professed the Christian religion, and also whether he knew the nature of an oath, to both of which he replied in the affirmative.] Am a free man and was Captain's steward on board the *Somers*. Never had any conversations with either Spencer, Cromwell or Small relative to or touching this mutiny. Have seen Cromwell and Spencer in conversation. Have heard Spencer asking some of the men if they would like a glass or liquor. Had heard nothing from any of the crew that would throw any light on this inquiry. Had not noticed any change in the behavior of the crew.

Manuel Howard (negro). Was steerage steward on the *Somers*. One day, after the Captain had been reprimanding Spencer for neglect of duty, he came down in the steerage and said, "The Captain has been reprimanding me, but he shan't do it much longer." I have often heard him say he would soon have a ship of his own, but don't know where he was to get it from. One day I was rubbing his head, and he asked me if I would go with him—he did not say where. I told him I would, and he said I should have nothing to do but rub his head, and brush his clothes, and clean his boots, and he would give me good wages. He did not say where the vessel was to come from or whether he was to be Captain. One day afterward Mr. Rogers asked me if I would go on his farm as overseer, and Mr. Spencer overheard it, and asked him, I think, if he wanted me, and he said, "Oh, d—n you now, you're going with Mr. Rogers, not with me." I have known Mr. Spencer give the men tobacco, cigars, and soap. I have seen him with a piece of paper on which he seemed to be writing some names, and he asked Mr. Rogers if he understood Greek. Mr. Rogers said he did, and Mr. Spencer then said, "Then you can't see it, or anyone else." After Spencer was arrested, McKee came to me and said, "I'm sorry Mr. Spencer is arrested—I'm d—d sorry." I said to him, "You'd beter shut up and knock off in time, or maybe you'll be there yourself one of these days." McKee appeared to be interested, and as if something was going on that was not right. The sailmaker and Wilson also appeared dissatisfied. I thought the vessel was not safe before the execution, though they were in irons. That is my opinion now also.

William H. Selzer. I am twenty-four years of age and have been seven months in the service. I think if the execution had not taken place an attempt would have been made to rescue them and take the vessel. I thought they would attempt to take the vessel because the others who were not put in irons till we got here were talking in a mob. They said it was a shame that they were put in irons. They would be talking three or four

together. Although the officers and petty officers were armed, I believe if the attempt had been made it would have been successful. I don't think the vessel could have been brought safe into port if the execution had not taken place.

January 12-13.

A number of apprentices with the *Somers*, boys from fifteen to nineteen years of age were examined. They testified to expressions of Spencer against the Captain, of the gathering of the crew in groups after the arrest, and a large majority of them—there were over 25 in all examined—said they were afraid that there would be a rescue attempted and that the brig could not have been brought safely into port had the prisoners not been executed.

Commander Mackenzie presented the following communication to the COURT, on the subject of a publication in the *Standard*, a list of punishments inflicted by him:

May it please the Court: A publication was yesterday made in the *New York Standard*, purporting to give an account of the punishments inflicted on board the *Somers*. This account could only be derived from the Log-Book which has been produced in evidence before this Court, and has remained in its custody. The publication is evidently designed to excite odium against me, at a moment when I am undergoing a solemn inquiry for a painful discharge of what I conceived to be my duty. I am ready and anxious to prove that no other punishments were inflicted on board the *Somers* than such as were lawful and necessary, but I cannot but object to garbled statements of them unaccompanied by any explanation of the attending circumstances, and therefore throw myself upon the Court for protection from this attempt to prejudge my case, and prejudice the public mind by the surreptitious use of documents within the custody of the Court, for the purpose of this investigation.

January 17.

William S. Johnson. Reside at Brooklyn, and was introduced to a Mr. Spencer, a son of John C. Spencer, though I can't tell whether it is the one this inquiry is about or not. He had a blemish in one eye. I gave him, I think, twelve months ago last fall, a key to some secret writing. He showed me several keys, one of which I think was Aaron Burr's cipher, and requested me to give him the key I had, which I did. (The paper of Spencer's which had a cipher at the top, was here shown to witness.) I do not know that cipher—it is not the one I gave Mr. Spencer. —I never heard anything from Mr. Spencer about the *Somers* at that time. It was not then launched. The key I gave Mr. Spencer was one he could speak as well as write, and that made him so anxious to get it.

Captain Sands. Am the Com-

mander attached to the Navy Yard. The *Somers* was fitted out under my superintendence at this Yard. She is 266 14-96 tons measurement. Her beam is 25 feet and a little over.

If the crew had possession of the berth deck, they could have cut off communication with all the provisions but bread, which was stowed after. With the ship at sea, in a small vessel like that, to have only one prisoner on either side would be a great inconvenience, and interfere with the management and duties and working of the vessel. Any disturbance would have interfered with the working of the vessel. If the prisoners had been confined in the cabin, and guarded from the deck, there would have been no interruption to their release by the crew but the bulk heads, which a single round shot would have demolished. Had the deck been in possession of the crew, and the officers below, one man at each end of the trunk, with a billet of wood in his hand, could have prevented the officers from coming on deck. Two men at each end would have been amply sufficient to have kept all below. The ladders are nearly perpendicular. Had the prisoners been confined in the ward room, they would have had access to the powder magazine.

The belaying pins would have been a very powerful and efficient weapon to keep the officers below. They are formed of iron, about fifteen inches long, an inch in diameter, and thicker at one end than at the other. All small vessels sail from here so full, that they have stores and provisions stowed on the berth deck. I now recollect that the *Somers* had a spare anchor and stock stowed on the berth deck, which would have been a powerful weapon to have staved in the bulkheads, or even to have staved a hole in the ship's side. I have known prisoners to free themselves from their irons when not strictly looked after by the sentinels in whose charge they were.

Acting Master Mr. Perry. I have the log-book of the *Somers* here. It is in the same condition as when I last produced it here. The day we first discovered the mutiny, was the 26th Nov., astronomical time, 12 o'clock. At the time of execution we were distant from St. Thomas 525½ miles by log.

The state of the weather the day after the execution, by log, was moderate breezes and pleasant weather. On the day of the execution, after the execution, it appears by the log that from six to eight it was squally with showers of rain; after that it was moderate and pleasant. From that time till we arrived at St. Thomas we had no squalls, except on the 3d December, from 8 P. M. to midnight, when we had moderate weather squalls. The occurrences relating to the execution are truly related in the log-book.

I observed a confident air about Spencer, Cromwell and Small, which appeared as if they expected a rescue. It showed itself even when the petty officers were arming. They seemed under no fear or apprehensions whatever during the whole time they were in confinement. The articles concerning mutiny on board a man-of-war were read to the officers and crew once a month.

I should think the Commander passed two-thirds of his time on

deck before the discovery of the mutiny; afterward, and until the execution, about eighteen or nineteen hours out of the twenty-four. After the execution he was not so much on deck, as he was indisposed. My opinion respecting the guilt or innocence of the men executed was not influenced at all by the opinions or fears of the Commander. After the arrest, up to the execution, I noticed a change in the physical appearance of the officers. There seemed a drowsiness and weakness about them, which increased up to the execution. The officers did not get, during the time between the arrest and execution, more than four or five hours' sleep, and that not refreshing.

January 18.

Commander Mackenzie: I am prepared to prove that more than a year ago, it was one of the amusements of Mr. Spencer to relate to the young children of one of the professors of Geneva College, in whose family he was domesticated, "murderous stories and tales of blood"; that the chief and favorite theme of his conversation was piratical exploits, and the pleasures of a pirate's life; that the great object of his ambition was renown as a pirate; that the book which he oftenest read, and which, on leaving Geneva College to embark in a whaler, he presented to the students' library, was the "Pirate's Own Book," and that it still remains there with his name in it; that on stepping into the stage coach to leave Geneva, the last words he said to a friend who took leave of him were, that he would next be heard of as a pirate.

Witnesses are now in attendance upon the Court to prove that throughout the period of his service in the *Potomac*, from Rio to Boston, the possibility of capturing her, and the use to be subsequently made of her as a pirate, were the object of his thoughts, and the theme of his conversation to three at least of her forward officers; to how may of the crew he may have unfolded his plans, is not known; that he detailed them in the presence of three can be proved.

It can be proved that he explained how the officers might be murdered in the night, and the ship captured—that, although he objected to the size of the *Potomac*, if he could obtain a smaller vessel, he was still desirous of undertaking his project in her—that he offered the first Lieutenancy of the

Potomac, if he could obtain possession of her, to one of her forward officers—that with her he proposed to capture some of the packets off New York—that from the captured vessel he hoped to procure a few choice spirits, and gradually change and thin off his crew, until he got a perfect one—that he proposed also to get in the track of outward bound Indiamen, and made particular inquiry as to the part of those vessels in which they stowed the specie for the purchase of their return cargo—that he also inquired if the masters of the Indiamen did not usually carry their families with them—that he went minutely into all the details of the discipline necessary to restrain the crew of a pirate, the means of refitting and watering in remote and unfrequented seas.

I am prepared to prove that, during a passage of nearly fifty days from Rio to Boston, in the *Potomac*, this constituted Mr. Spencer's chief topic of conversation among the forward officers and among the crew, and that as an ulterior project, when he found his plans for carrying the *Potomac* could not be matured, he proposed to equip, by some means, a clipper brig at Baltimore, and arranged all the details for manning and arming her after he should be dismissed from the naval service.

I am prepared to prove by John Ford, former ward-room steward of the *Somers*, that the night before the *Somers* sailed, Daniel McKinley told him that there would probably be a mutiny on board the *Somers*.

With regard to Samuel A. Cromwell, I am prepared to prove that for mutinous conduct he was turned out of his ship, and towed ashore on a grating—that very shortly befor the departure of the *Somers* from New York, he asserted in a bar-room of the Bowery of New York, that there would probably be a mutiny on board of her before her return, Charles A. Wilson being at the time in his company.

I am prepared to prove by Lieutenant Montgomery Lewis, that when employed in the Florida flotilla, under Lieut. McLaughlin, on one occasion, when in a boat expedition under Lieut. Rogers, Cromwell, having been put in irons for

drunkenness and mutinous conduct, menaced Lieut. Lewis by telling him that the next time they fell in with Indians other shots would be received than those that were fired by Indians; and that there would be some killed.

By Edwin Alfred, a seaman now on board of this ship, that during the greater part of the night he paraded before the tent of Lieut. Lewis, with a loaded carbine, and with the avowed purpose of shooting him, should he come out; that he had two separate projects for creating a mutiny among the seamen of the expedition; at one time to turn all the officers adrift in a boat with a single oar; to proceed with the boats to Cuba and the Isle of Pines, with all the recesses of which, and of the neighboring coast, he professed to be familiar, and then to engage in piracy.

Whatever the Court may decide, as to the evidence thus offered to prove the early piratical propensities, and the piratical project in another ship, of Mr. Spencer, I trust it will, at any rate, depart sufficiently from its rules to receive the entire testimony offered to prove the piratical tendencies of Cromwell. He alone, of the three mutineers who were executed, persisted to the last in protesting his innocence, even while asking forgiveness of Lieut. Gansevoort.

Such is the secret character of mutiny, and the precaution with which a practiced pirate especially would hide his guilty plottings against the lives of his comrades and the honor of his country, that it is impossible to adduce, even before this Court, all the evidence which rendered the guilt of Cromwell palpable to his officers and messmates, and divested it of all doubt; many trifling incidents that had weight at the time, are forgotten; many, consisting of looks and motions, significant enough to those who see them, cannot be described.

Though it is believed that abundant evidence has been adduced before the Court to prove the guilt of Cromwell, yet, with the means of showing his previous mutinous and piratical propensities at hand, is it not desirable to go a step farther, and satisfy those who are strangers alike to the peculiar position of a ship's company alone upon the ocean,

and the dire necessity that may grow out of a condition of that company, rare in any navy, and happily unparalleled in our own?

The *Judge Advocate* stated that he should object most decidedly to the introduction of all the testimony offered as to Spencer's conduct or declarations on board the *Potomac*, or other vessels, or as to Cromwell's behavior while in the Florida Squadron, as he considered it decidedly inadmissible. He had also doubts as to whether the declarations alleged to be capable of proof as having been made by Spencer, Cromwell, and McKinley, previous to the sailing of the *Somers* from this port, could be received as testimony. He thought, however, that if those declarations had been made immediately previous to her sailing, they might be received as testimony.

The COURT: We cannot admit testimony as to the conduct or declarations of Spencer on board the *Potomac*, or previously, or of Cromwell's while in the Florida Squadron, but testimony will be received as to any declarations made by Spencer, Cromwell, McKinley, or others, touching the intended mutiny, that occurred shortly previous to the sailing of the *Somers*.

Acting Master M. O. Perry (recalled). Was one of the Council of officers on board the *Somers*, and was present during G. W. Warner's examination. The question was asked of him whether he thought Cromwell deserved to be hung, and he replied positively that he did.

Purser Heiskell (recalled). I took down the testimony of the witnesses as taken before the Council of officers; correctly to the best of my belief. Warner there stated to the best of my belief, that Cromwell ought to be hung. He said so distinctly. Warner's statement was read over to him twice. He made no objection to it and then signed it as a true statement.

Lieut. Gansevoort (recalled). Was present at the Council of officers. Wilson never made any report to me that he knew enough to hang Mr. Spencer. He came to me and told what he said had been a conversation with Mr. Spencer and himself which was evidently a lie, and I told him so. He did it, I think, to ward off suspicion from himself. The form of the oath administered to the witnesses before the council of officers was: "You do solemnly swear that the evidence you shall give before this Council of officers assembled, shall be the truth, the whole truth and nothing but the truth, so help you God." The two first witnesses were ex-

amined without the oath, but afterward sworn with the alteration, "the evidence you have given"—their evidence being read over to them at the time. In the opinions which I gave of the necessity of the execution, I was not influenced by the arts or fears of the Commander or any other man. I was influenced solely by the dictates of my conscience and from the knowledge I had of the facts. The Commander did not take measures to ascertain which of the crew were disaffected and which not, because he did not wish to make known any suspicions he might have of any man at large without immediately confirming them. I thought, too, that the greater part of the crew was implicated and told the Commander so. I had a better opportunity of judging from my situation than the Commander had. I don't think that the officers could have stood out more than one or two days longer, carrying the weight of arms they did and not being allowed to sit down, and in constant fear of a rescue.

I judge from myself, and I am one of the strongest. I think the younger officers could not have stood it so long. Previous to the discovery of the mutiny, I think the Commander passed two-thirds of his time on deck, and afterwards much more. I remarked that during the time Spencer, Cromwell and Small were in confinement, they appeared quite confident, and not at all alarmed at their situation. They seemed as if they expected a rescue, nor did their manner change until they were told they were to die. The article relative to mutiny was read once a month to the crew. The instructions of Secretary Paulding requires that apprentices should not be allowed to draw their spirit rations or tobacco. An order was promulgated to that effect on board the *Somers*, in pursuance of the Secretary's instructions. I am not aware of any injury Cromwell had done me to make him ask my forgiveness, except that he had meditated my death. The treatment of the crew was humane. There were more pains taken to procure good provisions, fresh fruit and vegetables, and make them comfortable, than I ever saw on board a man-of-war before. I have known the Commander to give the boys fruit that had been purchased for his children, in consequence of the mistake of the Purser in not having purchased what was ordered. There was no excess of punishment on board the *Somers*, and no offenses were punished that are not punished on board other vessels. There appeared a reluctance on the part of Captain Mackenzie to punish. I have frequently reported some of the crew. The punishments were generally inflicted with a colt—in a few instances with the cats. A colt is made of three stounds, I think; it is lighter, much, than the cat. The punishment with the colt is always given without stripping, over the clothes. The punishment with the cat is a much more formal punishment than with the colt. When the cat is used the whole crew is called to witness punishment.

Dr. Lincock (recalled). Was present at the Council of officers and the testimony was correctly taken down. As Surgeon of the *Somers*, it is my opinion that the physical strength of the officers was much reduced and their

health materially affected by constantly carrying heavy arms during the day and sleeping with them at night, physical and mental exertion, having so small a quantity of sleep, being almost constantly on the watch from the time of the discovery of the mutiny until the execution. I think the officers were worn down more and more every day. It was quite visible in their countenances, and it was confirmed by their constant complaints. During the watch the idlers had to go on deck every half hour, and to do so they had to crawl under the hammocks, as they were strung, to get out, being heavily armed at the same time.

J. W. Wales (recalled). The testimony of the witnesses before the Council was read over to them, and they were informed if they wanted to make any corrections it would be done. Corrections were uniformly made when the witnesses desired. Previous to the conversation with Mr. Spencer on the boom, I had been as intimate with him as any of the officers. I had been found with him smoking and talking. Whenever he wanted to draw any tobacco or cigars from the storeroom, he would always come to me for it. No conversation relating to any attempt to take the brig had been had by Mr. Spencer with me previous to that night on the booms; neither had he given me any hints or intimations of such purpose, nor had Small, Cromwell, nor any person on board.

John Ford. I am not now in the service; I have been. Was ward-room steward of the *Somers;* I left her six or eight days before her last cruise. The night before the *Somers* sailed Daniel McKinley, one of the crew of the *Somers* at the time, said something to me about a mutiny. I was on board in the afternoon waiting for Mr. Wales, who owed me some little change. Towards evening I went on shore, and after I got out of the boat McKinley took me on one side and said, "Steward, there will be mutiny on board this time for certain; you may be glad you are not going out in her, supposing we run out of little stores this time as we did before."

Commander *Mackenzie:* Although it has been determined by the Court that a written defense of my conduct, founded on an examination of the evidence that has been adduced, is unnecessary, and, under the circumstances, inadmissible, I trust that the Court will not refuse to receive from me a brief statement of the reasons that produced the conviction in my mind, on which I acted, that the execution of the ringleaders of the intended mutiny on board the *Somers* was necessary to the preservation of the vessel. It is true that these reasons may be collected from my report to the Secretary of the Navy, which has been read before the Court; but they are nowhere stated in connection, nor with that distinctness and brevity

that are necessary to impress their force on the minds of others. My report to the Secretary was intended to be a full history of all the proceedings on board the *Somers*, for his information alone, and was far, very far, from being framed with any direct view to my own vindication.

I proceed, then, under the permission of the Court, to submit the following facts and considerations as the reasons that chiefly determined my conduct. How far their reality or sufficiency is established by the evidence, are questions that, without a single remark, I shall leave to the judgment of the Court.

First, I was influenced by my deep conviction of the reality of the plot disclosed by Mr. Spencer to Mr. Wales. Although I received the first communication with incredulity, yet when I reflected upon the earnest and solemn manner in which the disclosure was made, and the strong impression of the reality and imminence of the danger made upon the mind of Mr. Wales himself, my doubt vanished and my mind was filled with the most earnest solicitude to discover and adopt the proper means for arresting the horrors with which we were threatened. I at once determined to adopt no measure but after mature deliberation, to shrink from none that the preservation of the lives of those entrusted to my care, the honor of my country and my sense of duty should demand. Whether the influence of this determination is not apparent in all my subsequent acts, I submit to the judgment of the Court. I believed then in the existence of a plot in which, by the declaration of Mr. Spencer, at least twenty of the crew were concerned. The nature of this plot, involving the murder of the officers and a large portion of the crew, and the commission of almost every crime, convinced me that those who had agreed to it were capable of carrying it into execution and committing any atrocity. This opinion was further confirmed by my previous knowledge of the depraved character of the crew, and by the fact that many of them, although men in strength and size, were still boys in age, and consequently would be little likely to resist temptation and

more easily allured by the pleasures held out to them as accompanying the life of a pirate. Having stated the reasons which produced the conviction in my mind of the existence of the plot, it only remains for me to state those which induced me to change my original determination to bring the prisoners to the United States for trial, and to deem their immediate execution necessary.

I was influenced—First, by the insubordination of the crew manifested after we had left the coast of Africa, and very much increased after the arrest of the prisoners; their gloomy and angry looks, their secret conferences, broken off when an officer appeared; their increased reluctance in the performance of their duty; the actual disobedience of some; the attempt of several to communicate with the prisoners. All these circumstances convinced me that there was danger of a rescue, and that this scheme was in constant agitation.

Secondly, by the uncertainty under which we labored as to the extent of the mutiny, and the inutility and danger of attempting to ascertain, by an examination of the crew, how many were to be relied on. Let us suppose that the whole crew had been examined, and all had protested their innocence and ignorance: Could we have believed and trusted them? Would the uncertainty have been removed or diminished? On the contrary, must not the universal denial have increased and justified our suspicions of universal guilt? We must still have believed that many were guilty, and could not have known that any were innocent. If the examination had resulted in the discovery of the certain guilt of many of the suspected, our difficulties would have been still greater. To confine and guard them was impossible. To leave them at large, with a knowledge that their guilt was known, and that, if they arrived in safety, death might be their doom, was to render them desperate and an outbreak inevitable.

Thirdly, by the exhaustion of the officers, and by the impossibility that they could much longer sustain the fatigue to which they were subjected; and by the fact that, from loss of rest and continual exertion, we were daily losing strength,

whilst that of the mutineers, from increasing numbers, was daily becoming greater.

Fourthly, by the conviction that, even if it were possible for the officers to defend themselves and their vessel in fair weather, if a storm should arise, calling the attention of the officers and petty officers from the prisoners to the necessary duties of taking care of the vessel, it would have been easy for a few resolute men to have released the prisoners and taken possession of the vessel.

Fifthly, by the size of the vessel which rendered it impossible for me to confine any more prisoners and prevent those already confined from communicating with each other and with those of the crew who were at large.

Finally, by the conviction, that by the execution of the three ringleaders the mutineers would be deprived of the power of navigating the vessel, as no other person would be capable of taking charge of her, and that this was the only effectual method of bringing them back to their allegiance, and preserving the vessel committed to my charge.

Having thus briefly stated the motives which produced the belief that the immediate execution of the ringleaders was necessary, I would only add, that had any doubts existed in my mind as to the necessity of the course to be pursued, they would have been removed by the unanimous opinion of the commissioned, warrant and petty officers, whose means of judging were better than my own, that such a course was necessary and inevitable. Their opinion, concurring with my own, left me no room to doubt that in pursuing this course I was doing my duty faithfully to my God and to my country.

THE JUDGMENT

The PRESIDENT stated that the testimony being now closed the Court would be cleared. The Court will deliberate and frame their decision and it will then be sent to Washington for approval.

The decision of the COURT when promulgated later was as follows:

That a mutiny had been organized on board the United States brig *Somers*, to murder the officers and take possession of the brig.

That Midshipman Philip Spencer, Boatswain's Mate Samuel Cromwell and Seaman Elisha Small, were concerned in, and guilty of, such mutiny.

That, had not the execution taken place, an attempt would have taken place to release the prisoners, murder the officers, and take command of the brig.

That such attempt, had it been made in the night, or during a squall, would, in the judgment of the COURT, from the number and character of the crew, the small size of the brig, and the daily decreasing physical strength of the officers, occasioned by almost constant watching and broken slumbers, have been successful.

That Commander Mackenzie, under those circumstances, was not bound to risk the safety of his vessel and jeapord the lives of the young officers and the loyal of his crew, in order to secure to the guilty the forms of trial; and that the immediate execution of the prisoners was demanded by duty and justified by necessity.

THE COURT are further of opinion, that throughout all these painful circumstances, so well calculated to disturb the judgment and try the energy of the bravest and most experienced officer, the conduct of Commander Mackenzie and his officers was prudent, and firm, and that he and they honorably performed their duty to the service and their country.

Before the communication of this decision to the Secretary of the Navy, he caused the Commander of the *Somers* to be arrested on a charge of murder. There were three specifications, all of which were but variations of one and the same charge, that the execution was directed and carried into effect without justifiable cause. A Court-martial was convened, at the navy-yard in Brooklyn, for the trial. It consisted of the following officers: Commodore John Downes, president; Commodore George C. Read; Captains William C. Bolton, Daniel Turner, John D. Sloat, Joseph Smith, George W.

Storer, Isaac McKeever, Benjamin Page, John Gwinn, Thomas W. Wyman; Commanders Henry W. Ogden, Irvine Shukrick. The Judge Advocate was William H. Norris, of Baltimore. They commenced their sessions on the 2d of February, 1843. After the Judge Advocate had concluded the reading of the charges and specifications, Commander Mackenzie rose and said, "Spencer, Cromwell and Small were put to death by my order; but to the charges and specifications I plead not guilty." He was allowed counsel; and Mr. Griffin, Mr. Duer,[11] and Mr. Sedgwick acted in this capacity. The COURT was occupied in the hearing of this cause for upwards of forty days; a longer period, than was ever before consumed by any such proceeding in naval annals. By their final report, Commander Mackenzie was honorably acquitted of all the charges and specifications preferred against him by the Secretary of the Navy; and their judgment was confirmed by the President of the United States.[12]

[11] DUER, John (1782-1858). Born in Albany, N. Y. Leader of New York Bar in Insurance and Maritime Law. Author of Duer's Reports and Law and Practice of Marine Insurance.

[12] TYLER, John (1790-1861). Born in Greenway, Va. Graduated from William & Mary College. Called to the bar 1809. Member State Legislature, 1811. Member of Congress 1816. Governor of Virginia 1825. United States Senator 1827. Vice President of the United States 1841. President (on the death of William H. Harrison) 1841-1845.

THE TRIAL OF OSCAR T. CALDWELL FOR EMBEZZLEMENT, CHICAGO, ILLINOIS, NOVEMBER, 1855.

THE NARRATIVE

Railroads had not been running very many years in the western states or anywhere else in this country when this case arose. Wherefore it would seem that it did not take long to find out that the position of a conductor of a train was one which gave large opportunities for enrichment. Caldwell had been a conductor for some time on the Chicago and Burlington Railroad when his superiors began to suspect that he was not turning in all the money he collected on the train. Month after month when his returns were compared with those of other conductors on the same run it was found that his were usually less than the others. When the superintendent offered him a ticket agency in a small city at a salary of $1,000 a year in place of his salary of $700 as conductor, and he declined, this roused suspicion and the result was that the celebrated Pinkerton Detective Agency of Chicago, then in its beginning, was employed to investigate. This it did with great success; it sent several men over the road at different times on Caldwell's train; these men had marked money and bills which they paid to him as fares, and when Caldwell was finally arrested some of this money was found on his person. Confronted by the Pinkertons with the evidence of his guilt, he did not deny the charge, and the Railroad seems to have been willing not to prosecute if he would make restitution to the best of his ability. Negotiations to this effect were in progress when a lawyer got hold of him and advised him to give up nothing, but to fight. The result was that he was indicted by the grand jury and tried in the Recorder's Court in Chicago in November, 1855, and convicted.

THE TRIAL [1]

In the Recorder's Court of the City of Chicago, Illinois, November, 1855.

Hon. ROBERT S. WILSON,[2] *Recorder.*

November 19.

The prisoner having been arrested September 15th, and a true bill having been returned, he appeared today by his counsel who moved to quash the indictments. The motion was overruled but the State not being ready on indictments 1 and 2 a nolle-prosequi was entered on them and the trial begun on the third.

Daniel McElroy;[3] *Isaac N. Arnold*[4] *and John T. Stuart*[5] for the People.

[1] *Bibliography.* * "Trial of Oscar T. Caldwell, late a conductor on the Chicago & Burlington Railroad for embezzlement, before the Recorder's Court of the City of Chicago at the September Term 1855. Reported by J. Victor Smith, Reporter for Ohio and Indiana State Constitutional Conventions. Chicago: Daily Democratic Press Steam Co. No. 45 Clark Street. 1855."

[2] WILSON, Robert S. Member of the Bar of Michigan. Moved to Chicago 1850. Member of firm of Wilson & Frink. Was elected Judge of the newly created Recorder's Court in March 1853. His eligibility to office was questioned, he not having resided in Chicago for five years before his election and Quo Warranto proceedings were commenced against him. After a long contest the case was decided by the Supreme Court in his favor. Died 1883.

[3] MCELROY, Daniel. Born in Tyrone County Ireland. Highly educated. In Boston taught school for two or three years. Entered Harvard University and afterwards studied law with Judge Story. Went to Chicago in 1844. Elected State's Attorney of Cook County several times. Died 1862.

[4] ARNOLD, Isaac N. Born in Otsego County, New York. From sixteen to twenty he taught school half the year to maintain himself and attended school the other half. Entered law office of Richard Cooper and Judge Morehouse at Cooperstown and was admitted to Bar at twenty-one. Moved to Chicago 1836. Elected to General Assembly in 1842, 1844 and 1856. Presidential Elector 1844. Elected to Congress 1860. Warm personal friend of President Lincoln. Wrote "The History of Abraham Lincoln and the Overthrow of Slavery in the United States," and "Life of Benedict Arnold," 1880. Auditor of the Treasury for the Post Office Department. Died 1884.

[5] STUART, John T. Prominent lawyer of Springfield, Illinois. Member of Congress.

Robert S. Blackwell;[6] *E. W. Tracy*[7] *and T. Lyle Dickey*[8] for the prisoner.

Several hours were consumed in getting a jury, a number being challenged by the defense and finally the following been selected, the COURT adjourned until the next day:

William A. Tyron, Foreman; I. Bodwell; Benj. Marshall; J. P. Knott; J. Roberts; Edward Maguire; Caspar Arnold; Peter Button; Geo. W. French; Oliver Jaggar; Jas. Kettlestring; William A. Baldwin.

November 20.

Mr. Arnold (to the Jury): The indictment sets forth that on the thirteenth of September last, Oscar T. Caldwell was a conductor on the Chicago and Burlington Railroad; he was a popular conductor; there were no circumstances known to the companies leading them to suspect the integrity of Mr. Caldwell. The statute provides that every person in the employ of any corporate body who shall steal or embezzle any of the monies of said body, shall on conviction thereof be imprisoned in the State prison for a term

[6] BLACKWELL, Robert S. Born in Illinois, son of David Blackwell, eminent lawyer of Belleville, Ill. Studied law with O. H. Browning, Quincy, and opened law office in Rushville. Moved to Chicago and formed partnership with Corydon Beckwith. Author of "Blackwell on Tax Titles," and "Abstract of the Decisions of Counsel of Chicago 1874.
Canal 1867. Ass't United States Att'y General 1868. Corporation the Supreme Court of Illinois." Died 1870.

[7] TRACY, E. W. Highly educated, of commanding appearance and Websterian in his command of language and reasoning powers. In 1854 he entered into partnership with Charles S. Cameron and Company in 1861 as 4th Ill. Cavalry, Elected Colonel, joined Grant at Cairo, was with Grant at Fort Henry, Fort Donelson and Shiloh. Appointed Chief of Cavalry on Grant's Staff 1862. Democratic Candidate for Congress at large 1866. Commissioner from Ill. to Washington to secure appropriation for Illinois and Michigan had offices at 44 Clark Street, Chicago.

[8] DICKEY, T. Lyle (1811-1885). Born in Bourbon County, Kentucky. Graduated from Miama College. Moved to Illinois 1834. Admitted to Illinois Bar 1835. Organized company for Mexican War. Captain 1st Reg. Ill. Vols. Elected Circuit Judge 1848, served four years and resigned to re-enter practice. Went to Chicago in 1854 and returned to Ottawa in 1859. Organized Cavalry

not less than one nor more than ten years. It is charged that the accused was a conductor for the company named, that he received a very large amount of money belonging to the company some portion of which he embezzled and converted to his own use.

It is the duty of the conductor immediately after the trains leave the depot to go through the cars and ascertain who has paid fare at the office of the company and to collect the money for the fares of those who have not; he is to enter the amounts of money thus received in a blank tally sheet provided for the purpose. On the return of a conductor, say from Chicago to Burlington, this tally sheet will, if honestly kept, exhibit the exact amount of fares received during the trip. In the hurry attending a large passenger train and trip it would not be strange if the money handed over by the conductor should overgo the amount minuted on the tally, he might neglect to minute every fare taken, but if honest, the money returned would correct the tally. But it would be strange if the money fell short of the tally.

During the months of May and June it was discovered that the money returns of Mr. Caldwell were uniformly behind that of other conductors alternately running the same trains. He was a popular conductor and there seemed no reason why his returns of money should always be less than that of other conductors running on the same route. The discrepancy for one or two or three trips might not have been suspicious. But the average returns by Mr. Caldwell were seriously less than those of other conductors running alternate trains. The average of one conductor, for instance, was $97, of another $118, while Mr. Caldwell's were but a fraction over $76. In the month of August persons were placed on the trains to report the exact amount of way fares collected by Caldwell. Mr. Hammond, the Superintendent, wished to be absolutely certain of the guilt of the accused before exposure. This examination resulted in the discovery that Caldwell did not return all the money received by him for fares.

In September last a circular was issued requiring conduc-

tors, etc., to return to the general receiver of the company, the identical money received of passengers. This was done with special view of Caldwell's case and to make assurance doubly sure. It was found that of eighty-eight fares paid to him on a trip to Burlington he reported but 80½ fares; on the return trip he (Caldwell) received 47 fares and reported 31½ fares. Of the marked money paid him by persons set to watch him some was not returned to the Railroad but was afterwards paid out in the city by Caldwell and some of it was subsequently found on his person.

On the 9th of September four persons were set to watch Caldwell; they paid their fares to Caldwell on the cars, he reported but two. Of fourteen other fares known to have been paid him, he returned money for only eleven fares. In addition to this the confidential agents of the company found that he received on the return trip seven fares and reported but four fares. There was a discrepancy between his reports and the monies actually received of twenty fares. On the way out he pocketed twelve dollars and on the return trip twenty-four dollars.'

Among the monies paid to Caldwell by the four persons set to watch his operations were three twenty-dollar gold pieces, two tens and two fives. Of the gold paid to him, Caldwell returned none to the company's office. At the time of his arrest there was found on the accused a tally book which shows the manner in which he made up his accounts; his tally or memoranda was nearly correct, but you will see that he cooly and deliberately abstracted a portion and made up a false report. His own tally list shows a receipt of fifty-eight fares and he reports and accounts for but fifty-one fares. His own account, in his (Caldwell's) own handwriting, shows that going west he received $83.95, and reported but $64.75, leaving for his stealings going west, $19.20. On the return to Chicago on the same trip he received, according to his own report, in his own handwriting, $181.75; reports but $138.90, leaving for his stealings on the round trip the large sum of $62.05.

On two occasions the money returned by Caldwell overran

the amounts minuted on his tally book as received; at one time the excess was twenty cents, at another eighty-five cents; but when he comes to the large sums he lets the discrepancy go the other way.

By the most careful estimates made by officers of the company as to the gross amount thus embezzled, it appears that Caldwell had stolen fully twenty-five hundred dollars.

Mr. Hammond did not desire to expose the young man; they had been associated in business, and if the company could be indemnified no further proceedings would be had. On the 15th of September Caldwell was invited to the office of Pinkerton & Rucker; there he was told of the discovery of the embezzlement; they told him he was uniformly behind the other conductors, that they (P. & R.) did not wish him to criminate himself by an admission, but they wished him to make restitution to the company. The accused seemed overwhelmed. He did not deny his guilt. He asked to see Col. Hammond, who came and met him at the Police Office of Pinkerton & Rucker. Caldwell did not deny his guilt, bnt asked respectfully "how much" he was behind. Finally Col. Hammond told him the sum was twenty-five hundred dollars, and consented to accept his (Caldwell's) resignation on condition that he would surrender up his property and so make restitution to the company, whose confidence he had betrayed. Caldwell reckoned up his property and found it amounted here, and in Buffalo, to some seventeen hundred dollars. Some dispute arose at one time during these interviews as to the amount of gold embezzled; he was subsequently searched and the important memoranda and the money found on his person. He was taken to jail on Saturday night; while in jail Mr. Rucker visited him and again urged the prisoner to make full restitution to the company. At one time Rucker said, "Now, Mr. Caldwell, you don't pretend to deny that you are behind." "No," replied Caldwell, "I pretend to nothing of the kind." He thought he could not be behind so much as twenty-five hundred dollars. Said his wife kept all his accounts and until it was further investigated he did

not know how he did stand with the company. At one time Caldwell seemed utterly overcome, he said, "I wish I had never come to Chicago; I am ruined; I have lived too fast."

Finally and before any settlement was made—which at one time was nearly consummated between Caldwell and the agents of the company—lawyers obtained access to the accused, and in his behalf all further negotiations were declined; and Mr. Caldwell would not make any transfer of his property to the company.

The State would be glad if the accused succeeded in producing clear evidence of his innocence, but I fear that the proofs of his guilt are as conclusive as they are abundant.

WITNESSES FOR THE PEOPLE AND DEFENSE

Col. Hammond. Am Superintendent of the Chicago and Burlington line of road, commencing at Chicago and running over the Galena road for thirty miles and terminating at Galena; accused was Passenger Conductor in September last for the Chicago and Burlington line; corporate name of the road is "Chicago, Burlington and Quincy Railroad," from Junction to Mendota; from Mendota to Galesburg it is the Central Military Tract Railroad.

Mr. Dickey. Objected to oral proof of the employment of accused by the two companies named, or to proving the employment of either superintendent or conductors orally. Objection overruled and exceptions taken by *Counsel for defense.*

Mr. Hammond. The Central Military Tract Railroad Company and the Chicago, Burlington and Quincy Railroad Company run or operate the line from Chicago to Burlington.

Accused was in the employ of the companies up to the 19th of September. He made his reports and paid over his money to Chas. E. Follet, the General Ticket Agent of the companies, and at that time general receiver of monies; cannot state the precise time up to which Caldwell paid over monies to Follet; think Mr. Jurgee became Receiver sometime in August—he has acted as Receiver since. The places named in the "time-table" now handed me, are the stations on the C. and B. line and the distances therein put down are mainly correct. In the "tally list," the stations this side of the Junction are not named as in the "time-table," because we do not collect fares between Chicago

and Junction. The tally list is kept thus: When a way passenger gets on the train, the conductor collects his fare and marks down "1" opposite the name of the station to which he pays; the figures opposite the station to which the passenger or passengers pay, indicate the number of fares. The fare from Chicago to Burlington is $6. I have given all my time to the superintendence of the C. and B. line since May last; tickets have always been sold at Chicago and Burlington, and for some time past at the prominent way stations.

It is customary as soon as the train starts, and it is the duty of the conductor to observe the custom, to pass through the train, collect the tickets of such passengers as have bought their tickets at the office, to collect the fares of those that have not paid, and to enter these last in the tally sheet I have mentioned; small printed checks are returned to passengers on receipt of their tickets or fares, in token that they have paid their fares to the station named, and for the convenience of the conductor; I know of no printed regulations on this particular head.

It is the duty of the conductor to pass through the train and collect fares and tickets after *passing* each station. We have seven conductors and two trains each way every week day. The seven conductors run the four trains; if there were eight conductors they would each run the same days; there being seven, they follow each other round, and in progress of time, each conductor's runs on every day of the week. On our general time-table, the train arrives in Burlington just as the eastward train leaves that city for this: a conductor leaving here Monday morning would leave Burlington on his return trip Tuesday evening, and return here Wednesday morning. It is the custom to report to the Receiver of the line at Chicago and to pay over monies received for the eastward and westward trains.

To *Mr. Tracy.* These sheets are specimens of blank table-sheets, etc., furnished to conductors. The conductor minutes upon this small tally sheet the number and amount of fares received between Chicago and Burlington and Burlington to Chicago, and draws this off upon another blank which he hands in with his report. If five persons get on the train here for Burlington without purchasing their tickets in the office, and pay the conductor, it is the conductor's duty to mark on the tally-sheet against Burlington the figure "5," and in the proper place "$30," so that the money, in a correctly kept tally-sheet, will check the number of fares, and the number will check the money due. The conductor is paid a monthly stipulated salary agreed on; he is paid on pay roll or voucher; is paid $60; he is not to take his pay out of the fares he collects.

Chas. E. Follet. Reside in Chicago; since 1st of May last have been in employ of C. & B. R. R.; was General Ticket Agent in September last; was Receiver up to August last; the Receiver receives monies from conductors and passes them over to the treasurer; Mr. Jurgee succeeded me as Receiver; for the last ten years have been connected with railroads; the specimen tally sheet now handed me was got up by

myself; it contains the rates of fare between Chicago and Burlington; the blank now handed me is a "conductor's report"; the check lists are provided for convenience of conductors; it contains all the stations, with rates of fare between each; there are blank spaces in which conductors are supposed to enter the number of all fares received; the conductor's report is made up from the tally or check lists; in cases where there is more money than the tally lists and report call for, my instructions have been that conductors should—if the sum was enough—set it down as a through fare from Chicago to Burlington—if less than $6, it was to reach as far as it would go commencing at this end of our road, or over our road to the C. M. T. R. R.; our line is made up of three roads, and it is our duty to protect the interests of each, and as accurately as possible.

I handed to Mr. Caldwell a copy of this notice to return the identical money received on the trains. The conductors on our line "run round," as we phrase it, so that in the course of time each conductor had the same days to run in. We are able to know the average of fares received by each conductor. "First in first out" was the rule. I have made a written statement showing the amounts and the average fares taken by each conductor between a certain day in May and another in September; this includes the receipts of Mr. Caldwell. The amount of fares taken by each conductor is something of a matter of luck; know of no reason why their receipts should vary, but know that they do vary. The fact that the conductors on the C. & B. line "run round" would tend to cause the average receipts of each conductor to be materially the same.

Mr. Arnold. Is this paper (handing it) your statement of the average fares reported by the conductors on the C. & B. line?

It is.

[The question objected by *counsel for defense.*]

Mr. Arnold contended for the right to show the *quo animo* with which the accused withheld a part of the monies received by him for fares; a large deficiency in his accounts would be proven, and the prosecution desired to show that this deficiency was not accidental but designed and criminal; that it was not a deficiency for a single trip, but a continually occurring deficiency for every trip for several months; guilty intent would be proved if the prosecution were allowed to give the evidence. Is "Wharton" in court?

Mr. Blackwell. We don't use it. Wharton is a good prosecuting book only. (Laughter.) Roscoe is a good book for all sides.

THE COURT. Mr. Sheriff, when the noise and confusion in

this court is so great that you are to presume we can't hear anything forthwith enforce silence.

Mr. Arnold quoted other authorities in support of his position, that the defense in this case had a right to prove other pecuniary delinquencies of the defendant as conductor on the same line just previous to the crime charged in the indictment, for the purpose of showing the *quo animo*. 21st of Pickering, p. 515; Wharton A. Crim. Law, p. 238; 2d Russell, p. 777. The point in controversy is the mind with which this crime was, as we shall show, committed. We shall prove that the defendant made a series of frauds and peculations from the funds of his employers besides the particular ones charged in the third indictment. Suppose we could show that Caldwell, in the month of May or June last, went to his confreres—to his brother conductors—and said, "This company don't pay us wages enough; I'm going to keep back a part of the fares I receive?" Would not this be competent testimony? If so, then certainly it must be competent to show that the accused did keep back and steal a portion of the fares taken by him, Archibald, p. 449. The peculations of Caldwell, if proved, are to be regarded as parts of one continuous transaction.

THE COURT. Suppose the law is as you say, Mr. Arnold, would it apply to this case; would you be allowed to show, by circumstantial evidence, that the receipts of Caldwell fell below the receipts of other conductors on the same line, and infer from that that he stole the amount of the deficiency, as charged in the indictment.

Mr. Arnold replied to the Court, and briefly repeated his position.

Mr. Blackwell in an argument of some length and great force opposed the admission of the testimony offered.

THE COURT said that the decision of the points made by counsel would be reserved for further examination and citation of authorities—the case might proceed on other points.

Chas. E. Follet. Every trip in the month is numbered—unless something extraordinary occurs the conductor always makes

his report and pays over the monies received immediately on his arrival in this city; two separate reports are made, one for the Westward, and one for the Eastward trip. The report now shown me is that made by O. T. Caldwell for the train run out of Chicago on the evening of the 9th of September last—the handwriting in the filling up is that of O. T. Caldwell—this other report is that of O. T. Caldwell for train run out of Burlington on the morning of the 11th of September—the writing in ink in the indorsement is by Mr. Caldwell.

Cross-examined. Have been in connection with railroads since 1845; have occasionally conducted trains of railroad cars, never regularly. Conductors frequently have a surplus of monies on hand that they cannot account for; this is the case oftener with young than with older conductors who know how to apply surplus money according to instructions. I have known conductors to be short of the amount called for by their accounts, but they are not so often short as they have a surplus. Conductors often make mistakes in adding up their columns, and also in the extension of fares. Where conductors have a surplus of money amounting to a through fare ($6) I have directed them to enter it in their reports for a full fare; where it is less than $6 the conductor is directed to enter it as received between such stations as will protect the interests of each corporation forming the line. The words "Express divisible as follows" on the back of the blank the conductor's report was for the convenience of conductors at the time these blanks were issued; it was then the custom for conductors to collect the charges for express goods, and this part of the blank was to show what proportion of the express money belonged to the several companies of the line.

I keep separate accounts with the three companies forming the line, because I was so directed by my superior officers; the three corporations are the B. & Q., the C. M. T. and the C. B. & Q. Railroads. It was the spirit of my instructions that the money earned on each rail should be carried to the credit of the company owning that rail. When conductors are first employed they are entrusted by the Railroad Company with what is called a "Bank"—some thirty or forty dollars for the purpose of making change; when the conductor leaves the employ of the company or the companies, he refunds this bank. I should think there might be some difficulty in keeping the identical money received for fares from the "bank."

Mr. Caldwell's "bank" was some thirty, perhaps thirty-five dollars. The object of the "bank" is for the convenience of conductors in making change, and usually in small coin. [The latter part of the answer and question that drew it out was objected to by the defense.] I had given Mr. Caldwell the same instructions with regard to "surplus," etc., as to other conductors.

Samuel Powell. Am employed in the general ticket office of the C. B. & Q. R. R.; know Mr. Caldwell; was in the office during the last of September; the hand writing in the conductor's reports now handed me is that of Mr. Caldwell; the pencil marks are in Caldwell's hand writing

except where I have corrected them; the footings were erroneous and corrected them; the sealed brown paper package now handed me by Mr. Rucker, and I found (as I was informed) on the person of Mr. Caldwell at the time of his arrest; they were handed me contains the tickets kept them under lock and key until I sealed them up and stamped them with my seal as they now appear.

Carl F. W. Jurgee. Have been in the office of the C. B. & Q. R. R. since June last; since August I have been receiver; my duty is to receive all monies from the stations and from the conductors; I have here the sum of $203 which I received from conductor Caldwell on the 12th of September.

There was no other receiver for the company but myself; Mr. Caldwell has never paid any money to me since this of the 12th of September.

Mr. Arnold offered in evidence the conductor's reports for trips of run No. 49 west, on the 9th September, and No. 50 run east, on the 11th of September, and the "cash statement" accompanying the payment of the money to the receiver on the 12th September.

November 21.

Jas. E. Yost. Am clerk for Mr. E. A. Rucker, of this city; in the month of Sept. last I was employed to go to Burlington; it was on Sunday; I went to watch the conductor on that train; to see the color of the tickets or checks, and the number of passengers that paid.

I went on board the cars on the evening of the 9th of Sept. and took my seat in the 2d passenger car of the C. B. & Q. R. R.; I paid my fare to Burlington after we had got out from Chicago a few miles, paid it to Mr. Caldwell, the conductor of the train; he sits there by Mr. Blackwell; I paid him $6; I gave him a $20 gold piece; I kept account between Chicago and Burlington of the number of passengers I saw pay the conductor. I kept the account on a memoranda which I have here. I paid him my fare between Chicago and the first station going west; first saw Caldwell collecting fares soon after leaving Chicago; next saw him—

(Witness here examined a memorandum book.)

Mr. Blackwell. Have you any recollection of color of the tickets, number of passengers, kind of money, number of fares, etc., independent of reference to that memoranda? I have recollection that colored tickets or checks were issued and remember the color that passengers had that had paid their fares, but I can't state the number of either without reference to this memoranda.

Mr. Blackwell. Then we object to the testimony.

THE COURT. Did you make this memoranda at the time the number of passengers that paid their fares received their checks? I did; I put it down, not at the moment, but as soon as the conductor went into the next car, which was within a very few minutes.

Mr. Blackwell. Is there in the memoranda a statement of all the colors and of all the species of monies paid by the passengers and the amounts? I did not get a perfectly full list.

Mr. Blackwell. Your Honor now sees what we are driving at.

THE COURT. Yes, but whether you have any right to drive at it.

Mr. Arnold. Have you any means of ascertaining the number of passengers on the trains at the Junction? Yes; the memoranda shows; I have no other means of stating accurately.

Mr. Arnold. How many?

Mr. Dickey. Witness is asked to refer to his memoranda; now has witness a right thus to refer merely to refresh his memory? If a witness is called to prove an alleged fact he must do so from his memory of the facts as they transpired at the time; he may only look at memoranda to refresh his recollection; I may make a single x on a piece of paper at the moment of meeting a friend; ten years afterward I meet that friend, but am only assured of his identity by reference to that x accidentally made at the moment of meeting; I would not be allowed to swear exclusively by the memoranda, but only allowed to refer to it.

Mr. Arnold rose to read an authority.

THE COURT. We do not wish to hear anything from the prosecution; but as we are always willing to hear from the side to which we are opposed, we will listen to the defense.

Mr. Blackwell argued his objections.

THE COURT. Upon this question the Court has no doubts. The evidence is admissible.

Mr. Arnold. How many passengers were there when the cars arrived at the Junction? Forty-two after leaving the Junction; 40 from Chicago to the Junction; at Aurora, 43; at Mendota, 29; Galesburg, 29; Monmouth, 25; at Oquawka Junction I have no count; going out from Chicago I saw passengers pay their fares; first—a few minutes after leaving Chicago 5 paid; at Mendota 1 paid; at Wataga 4 paid; at Galesburg, 7; at Oquawka Junction, 3; I paid $6 through fare from Chicago to Burlington; received a green through check; paid a $20 gold piece; I arrived at Burlington Monday, Sept. 10, about 7 A. M.; I left Burlington on Tuesday, A. M.; coming back I made a memorandum of passengers, fares, etc. Leaving East Burlington there were 18 passengers (Caldwell's train—2d passenger car); at Galesburg, 30; at Mondota, 36; Plano, 54; Aurora, 54; Junction, 40; Cottage Hill, 42; after leaving Burlington 11 passengers paid between that and the first station; Oquawka, 12; Monmouth, 1; Galesburg, 5; Wataga, 6; Galve, 1; Kewana, 5; Dover, 1; Mendota, 4; Waverly, 4; I paid my fare through from Burlington to Chicago, coming

back; gave him a $10 bill marked; the bill now handed me is the identical bill I paid to Caldwell; I marked it by putting two black dots inside the cipher in the "10"; received the bill from Mr. Ed. A. Rucker; received it on Sept. 9th for the purpose of paying to Mr. Caldwell; the marking was pointed out to me; saw a memoranda, in Mr. Rucker's possession, of the date, number and description of the bill; it was in a blank book.

Cross-examined. Don't know where Mr. Rucker got the money he gave me; he took it from a drawer in his office, corner Washington and Dearborn; don't know Col. Hammond; never was connected with a railroad; had traveled on a railroad three or four times before, more or less; never watched the operations of a railroad conductor particularly before; might have left the cars several times in the trip; didn't go into an eating house; ate an apple or two; don't know how many passengers were going through to Burlington; passengers changed their seats sometimes; I changed mine; sat a little forward of the middle of the car, 6 or 8 feet from the door; had no memorandum in my hand when looking at the conductor; made my memorandum in pencil mark; the one I produced here has some pencil; the writing in red ink don't look like Rucker's; it is not mine; don't know whose figures there are in margin; I made the figures in pencil mark; made those in ink (now referred to) after my return to Chicago; I made both the memorandums from each other; the memorandum now shown me is the one I made after arriving at Burlington; the cars were in motion while I made some of the memorandums; on my return I asked Caldwell what time we arrived at Mendota, and if we dined there; the only other conversation I had with Caldwell was when I paid my fare; he asked me where I was going and how many I paid for; there were three other men on the same train and on the same business; didn't know them; found out they were on the same business as we crossed the ferry: they knew my business; didn't compare notes; slept a part of the time when on the way to Burlington; can't see when asleep; don't know the exact time I went to sleep or waked; waked before daylight; at stations people came in and went out; had never seen any of the passengers before; couldn't distinguish any of them now; at stations some persons may have come on board and gone off before the train started; going west; didn't know the destination of any passengers after leaving Chicago; I walked about the car and counted the passengers several times; there was a dim light in the cars; some of the passengers were lying down; some occupied a whole seat; didn't count the seats; the lights were near the end of the car; at no time was it so dark that I couldn't count the passengers; sat in my seat most of the time while making my memoranda; was near a light; didn't show to anybody by my action what my business was; passengers paid Caldwell mostly in bills; don't know what kind; Caldwell had his book in his hand as he went through the cars; saw him make motions as if figuring while receiving fares; think he received some fares without mak-

ing the motions indicating the recording of fares. Can't tell how much money was paid between Oquawka and Burlington independent of my memoranda; coming east there were ladies in the cars; don't remember any children; in one of the cars there was a saloon; was in the second passenger car both ways; it was not the same car I think; took my seat in the second car by directions from Mr. Rucker; made my mem. immediately after Caldwell left the cars, a minute or so after he had collected tickets and fares; the money given me by Mr. Rucker did not belong to me, nor any part of it; don't know whose it was; gave the change back to Rucker; can't tell how many persons paid fare to Caldwell after leaving Chicago, except from my memory of the memoranda; had never been over the road before; only knew names of stations by the check I had; in making out my memoranda I went by the check and by those names in red ink; didn't compare names of stations as printed on the check with the writing in red ink; slept in the latter part of the night; only know I wasn't asleep at Oquawka by the evidence of the memoranda.

Samuel Bridgeman. Went on Mr. Caldwell's train to Burlington on Sunday evening, the 9th of Sept. last; arrived at Burlington next morning; sat in the second car; first saw Caldwell as he entered my car after leaving Chicago; had the hind seat on right hand side as you entered; paid $6 fare to Caldwell; paid him a $10 gold piece, an eagle; I could identify the coin I paid him; the coin now handed me is the one I paid him; there is a small hole in the star over the head and the crossbar cut out of the letter A; it was dated 1849; the marks were shown me bv E. A. Rucker before I started; know Jas. Yost; he was in the same car with me at the time I paid my fare; I saw him in Burlington after reaching there; he went through with me; I saw the same $10 gold piece after I arrived at Burlington, in the hands of Mr. Benedict; he pulled out some gold, among which was the identical piece I had paid Caldwell for fare; I came back on the Tuesday's train; rode in the third car; paid my fare through to Chicago with two $5 bills; paid it to Caldwell just after leaving Burlington; they were marked bills; the ones now handed me are those I paid Caldwell; thev were handed to me by Mr. Rucker.

Cross-examined. Was not previously acquainted with Caldwell; had never before been over the C. & B. road; was employed by Mr. Rucker; had been a policeman until last spring; Mr. Rucker employs a detective police; was policeman in N. Y.; made Rucker's acquaintance in N. Y.; been policeman three years; was master at arms in the U. S. frigate *Congress;* was a "detective" at the Crystal Palace; was aware that other "emissaries" went down to Burlington with me on the track of Caldwell; saw West on Saturday evening before going to Burlington; I was aware each of these men (Yost and Benedict) were going out to watch the conductor; know Yost by description and Benedict also; West was described to me; saw Benedict at the depot here before we started; saw him going into the first car or out of the forward end of the second car;

I rode in the fourth car; staid in the second car twenty or twenty-five minutes before I left; saw Yost there; staid in the fourth car all the way down; saw none of the "emissaries" in the third or fourth car; arrived at Burlington early in the morning; Benedict and I both stopped at the same hotel.

B. F. Benedict. Went out in Caldwell's train to Burlington on the 9th of September last; went out between eight and ten o'clock Sunday evening; sat in first passenger car; paid fare shortly after leaving Chicago to Caldwell who sits over there; paid $6 fare in a $20 gold piece; he subsequently gave me change in gold, he gave me a $10 and a $5 in gold and I gave him a $1 bill back. Mr. Rucker gave me the $20 in gold, I brought back the $10 given me by Caldwell; think I could identify it; the one now handed me is the one; it has a hole bored in the star over the head. Saw another person pay fare going west; he sat in the seat forward of me and paid a ten dollar bill I think; saw that person go through to Burlington; he was a pock-marked man, with a dirty white wool hat, painted or whitewashed; his name was West. Reached Burlington between seven and eight Monday morning; on Tuesday A. M. I returned on Caldwell's train; paid $6 fare to Chicago; paid him a twenty dollar gold piece, he gave me back a $10 gold piece and a $5 gold piece; I gave him back $1 in gold; am not sure I could identify the $10 in gold, think I should; saw West on the trip coming east; came in third car; know that Mr. West came through on that train to Chicago; I saw two ladies who sat in front of me pay fare, soon after leaving Burlington; they came through to Chicago; one of them gave Caldwell two $5 bills; think the other gave him a $5 and a $3; saw Mr. Bridgeman pay a through fare; he sat behind me; Bridgeman gave Caldwell two bills; saw a man sitting by the side of Bridgeman pay; that man came through to Chicago; saw him here; I returned to Mr. Rucker the identical gold received from Caldwell within two hours after arrival here.

Cross-examined. Came here some two or three months since from Buffalo; lived there near eight years; my father lived near Buffalo; have been engaged as a "detective" in Buffalo and for Pinkerton & Co. here; had a conference with Rucker on the 9th of Sept.; received from him instructions and three $20 gold pieces; kept no portion of it myself; I was instructed to take the first car going west and the third coming east; knew Yost was going; knew that other persons were going, Mr. Bridgeman and West; saw West in Chicago depot, Yost on the cars and also Bridgeman; three cars were occupied; I am paid by the month; receive no extra pay; I used my own money to pay my expenses while gone; don't know who the gold belonged to.

Edward A Rucker. Caldwell came to our office between 6 and 7 o'clock on the evening of Sept. 15; I was in; Mr. Pinkerton came in with Caldwell at the usual front entrance; had seen Pinkerton in the afternoon; he had not gone away with the avowed purpose of arresting Caldwell; I did not give Caldwell the idea that if he would refund the money he should not be prose-

cuted before Col. Hammond was sent for.

Caldwell may have been under some durance or restraint with regard to his locomotion; I can't say that Caldwell knew that he was at liberty to leave that office —that he knew there was any restraint. I think just before Hammond was sent for I suggested to Caldwell whether he wouldn't like to see Col. Hammond. My object was entirely for Caldwell's benefit; that he might have an opportunity to make an arrangement with Col. H., that he seemed unwilling to make with us. Something was said to Caldwell to the effect that he now had an opportunity to settle his deficiencies in account with the company, and of retiring from their service without the question of the real circumstances being raised, or the fact of his having been at our office at all known; no one might know of the investigation except Mr. Pinkerton, Col. Hammond, myself and one or two others; perhaps I mentioned Mr. Joy. I did not hold out any inducements to him—none whatever; I did not speak of any criminal prosecution; Caldwell's impression seemed to be that there would be no criminal prosecution. The specific sum was named; something was said about the mode of arriving at the amount that had been taken, or an approximate sum; it was remarked that owing to the way it had been taken, the exact sum could not be ascertained.

November 22.

THE COURT ruled with regard to the admissibility of the evidence of Col. Hammond and others as to the conversation had with the accused at Pinkerton & Co.'s office at the time of his arrest, that it was admissible. It would still remain a question for the jury whether the circumstances in which the accused then stood would effect the admissions or conversation.

Charles G. Hammond. I went to Pinkerton's office at the request of Mr. Caldwell; when I went in I said, "Caldwell, I came here at your request and am ready to hear anything you may have to say." The first part of the conversation was in the presence of Mr. Pinkerton or Mr. Rucker, or both; my impression is that Mr. Rucker commenced by recapitulating the conversation, or the substance of it, that he had had with Caldwell; after a while Pinkerton or Rucker, or both, withdrew and left Caldwell and myself together. Our conversation then referred to three or four points. I stated to him my regret at the position he was in; I told him I had always treated him with great kindness. To this he replied, "You have always treated me as a father." I stated to him that I had desired to find a different state of facts, and explained fully the reasons that induced me to test his runs; that his being so uniformly behind and deficient for so long a period of time, as compared with the average of the other conductors,

had forced upon me the conviction that he was dishonest; that I was particularly unwilling to discharge him from the time he had been with us. I stated to him that I was unwilling to discharge him unless I had some reasons that I could explain to his friends as well as satisfactorily to himself, and that I had employed or called in the aid of Pinkerton & Co. for the purpose of ascertaining how this might be, and that the result was overwhelming, so much so that I did not feel at liberty to let it pass. I stated to him that I would have been glad to have received his resignation and let him pass out, or off, into other business, making his own excuses for leaving our business—such excuses to his friends for his resignation as he saw fit. Among the first remarks I made to him was that I did not wish him to say anything to me by conversation or otherwise, by way of confession or admission, or otherwise, which he did not wish to say or make. I told him that I, in my conversation with him, should treat him as guilty, for so I believed him. I did believe him guilty; told him that in my conversation with him I should assume that he was guilty; I then went on to give him all my reasons. The first reason was because of the deficits continued through a period of some four months as compared with the general average of all the other conductors; I stated my subsequent reasons; stated the facts as they appeared to my mind by (or from) the running of the two runs prior to that time; don't think I stated specifically the number of trains watched. I stated to him (Caldwell) that the reasons why I would (or must) treat him as guilty were from the facts discovered on his train; the trains he had run the last two times ("twice run before"); I did not go into the details; I told him (Caldwell) that I would have been glad to have received his resignation; that I would be glad to receive it now, provided such restitution should be made to the company as would not distress his family, provided that making a restitution comported with his feelings; I said it would be better for his reputation and his feelings; in this I had particular reference to giving him an opportunity to redeem himself, to making a good man; Mr. Caldwell occasionally asked me how much his "deficiencies" were, or his "deficit," or "how much is the difference"; I told him the difference between him and one conductor was large; between him and the average of the other conductors not so large. I told him that the amount he was behind one conductor was $2,500; he replied, "I have no such amount of property," or "I cannot secure such an amount as that," or "I have no such amount as that,"—one of the three phrases. I next remarked to him, "You have a mortgage on property in Buffalo, which you told me amounted to $1,000." He had told me this previously, when I was looking into his resources with reference to a restitution. He replied that the mortgage was only worth $800; it was a chattel mortgage on a livery stable, in possession of an adopted brother at Buffalo; I asked for his (Caldwell's) other property; mentioned information that his furniture was very valuable; he mentioned his house,

which was built on a leased lot on Clark street. I asked him for his other property; some small matters were spoken of; think the house amounted to $700; he did not admit that the furniture was very valuable; I thought it was and pressed the matter a little. I said to him, "It is not in your power to make very full or large restitution to the company, but what you can I wish you would; I would be glad to receive your resignation, and allow (or have) you to make such excuses to your friends as you see fit; go into some business and redeem yourself." I especially allowed him to retain his household furniture; think the value arrived at in our conversation was $700 for the house; Caldwell stated at different times during this interview that he wanted time to figure up his affairs; he could not tell how he stood; said he felt confused somewhat and needed time to look over his matters or to estimate his affairs, to see how he stood, what he had got and how he had got it; I explained to Mr. Caldwell the reason why I had offered him the ticket office at Burlington within a short period; it might be a mystery to him after what I had now said of what I had known; told him the offer was to enable him to remove from his associations here; that in Burlington, though the salary was $1,000 he would soon find he could not live upon that amount; such had been his habits of living and spending money that he would naturally seek other business, and would thus go away and perhaps redeem himself; I told Caldwell that his refusal to take that office, it being worth $1,000, and his present office but $720 per annum, had strengthened my suspicions. He admitted the fact.

Mr. Blackwell. Mr. Hammond, I observe they call you Colonel—as a preliminary question, let me ask how you got that title? John Wentworth gave it to me, sir.

Cross-examined. Have been engaged exclusively in the business of railroads since 1852; superintendent of the Chicago and Burlington road since the early part of March last; previous to that I was general agent of the Michigan Central road; have never been a conductor, but have sometimes had charge of trains. Once had a Sabbath school excursion to Batavia, when I stated to the conductor that I would take charge of it myself. I did so, and afterwards sent the money to the proper officer in a note; did not state in that note that I did not know how I came by it; have made it a duty to frequently pass over the road, and anything which did not appear to be right, I spoke to the conductor in regard to. I have frequently detected errors at the end of the route which conductors have made. The conductor who arrives in the morning generally makes his report in the forenoon; don't know of any particular instance of delay in making their reports of so long a time as a day or two; if the conductor arrived on Sunday evening he would wait till Monday before reporting; don't know of any rule of the company on this subject; it rests with the officers; am not superintendent over the treasurer; the ticket agent generally consults with me; the receiver is under the control of the treasurer; conductors generally make their tally immediately on taking

fare from a person on the cars, but there is no general order on that subject. Mr. Caldwell gave as a reason for not wishing to accept our offer of the post of ticket agent at Burlington, that he did not want to go there—that his wife being a stranger there would not like to go. Mr. Caldwell was formerly in the employ of the Michigan Central Company as ticket agent at La Salle; he left that post and went as conductor on the Aurora Road; from that he was transferred to our ticket office on Lake street, and from there he went back to the road as conductor. Mr. Rennick was taken from the ticket office at Burlington and placed on the train as conductor; recommended the transfer of Mr. Caldwell from the ticket office at La Salle to the Aurora Road; it was his own desire; had full confidence in him; the first suspicion I had of his dishonesty was when he left the ticket office in Lake street, where he had a salary of $1,000, and went back to the train at a salary of $750; the services required of the ticket agent occupy more time, but are perhaps not more laborious than those of a conductor. There were seven men to run four trains on our road; they laid over at one end twenty-four hours, and at the other end thirty-six hours. I suppose, as the roads are now managed, a ticket agent, by conspiring with a conductor, might be enabled to steal from the company. During the conversation between myself and Caldwell at the office of Pinkerton, my impression was that he was under arrest; was told so when I went upstairs. He appeared confused, but my judgment was then, and still is, that it was a confusion put on, and not real. I believed he was guilty; was aware that Caldwell and the ticket agent, by combination, might steal when I offered him the ticket agency at Burlington. I set spies upon the heels of Caldwell, in order that I might prove or disprove my suspicions —to be sure whether he was guilty or not—at the same time having no doubt of his guilt. The receipts on trains on public occasions, such as 4th of July, are of course expected to be greater than on ordinary occasions. Can't say whether Caldwell happened to run any such train or not. There was no direct confession or denial by Caldwell at the time I talked to him at Rucker's office; I did not intend to prosecute him if he made such restitution as was in his power; I held out that idea to him all the time; first employed Pinkerton and Rucker to follow Caldwell some time in August; have never known two conductors to average precisely alike in their returns; it depends upon whether they have more or less passengers and upon their faithfulness in making their reports. I told P. & R. to say to Caldwell that if he would put his property into the hands of someone to secure the company, he could have such time as he desired to figure up his affairs; was advised that Caldwell was to be arrested that day, before the arrest was made. Think I was told in his presence that he had been searched. After the run of the 13th, I gave Pinkerton and Rucker positive orders to arrest Mr. Caldwell; no understanding was had between Pinkerton and Rucker and myself in regard to the manner in which the arrest was to be made;

gave no particular directions to them to try to induce Caldwell to make restitution; I did not tell them to send for me, but Rucker said he might want to see me; I told them I should be at my office; I have no bargain about the subject with Rucker and Pinkerton; they were employed by me for this particular case.

Mr. Arnold. What were the averages of the conductors?

The *Defense* objected on the ground that it involved the question in regard to the introduction of the transcript of the several conductors' reports and averages, which had been before offered in evidence and objected to, and which question was still undecided by the Court.

THE COURT said that he might decide the whole question at once, in regard to the proposition to introduce this statement of averages, the opinion of the Court was then, and is now, that the paper in itself does not contain evidence which would be admissible even in a civil case. The paper purports to contain a statement of what was or what should have been, reported by seven different conductors. Now, to make it competent as testimony, it would have been necessary to call these conductors and first prove the statement to be correct. A mere transcript, without proof of its accuracy, was not sufficient.

In reference to the argument that it was competent to introduce it for the purpose of showing intent, it was sufficient to say that proving the fact of one crime does not show any intent to commit another. The O'Connell case had been referred to. That case did not present a parallel, as O'Connell, though not present at the meeting, was cognizant of what was to take place, and attended afterward similar meetings which had the same object in view. For instance—a man had five horses stolen, one each night, for four consecutive nights, all by the same person; but the fact that the thief stole the first horse would not be competent testimony as showing that he intended to steal the second; nor the first and second that he intended to steal the third; and so on. The circumstances surrounding and connected with the transaction in question were all that could be adduced to show intent.

As to the defense opening the door for the admission of this statement, the prosecution might go on and examine the witness in reference to any new question which the defense had put to him—they could resort to the same sources of information which the defense did. But the testimony in question would not be permitted to come in.

Mr. Hammond. The averages of which I spoke, so far as they were made up by me, extend from May to September; there were seven conductors running with six of whom we compared Caldwell's averages.

Mr. Arnold. With how many of the other conductors' were Caldwell's averages compared?

Objected to by *Counsel for defense.*

THE COURT decided that the conductors themselves and others who made these tables or furnished the data should be called instead of putting the tables of averages themselves in evidence. It was charged that the reports of one of these conductors was false; might not the reports of the others be incorrect?

Mr. Stuart. I call your Honor's particular attention to that important point; if the reports of the other conductors are incorrect so much the more direct and all important is this testimony for the People, for of course they would not return more money than they collected, and if they returned less it would only prove the peculations of the prisoner to have been so much the greater.

THE COURT sustained the objection and decided that the tables of "averages" could not be put in evidence because it was not the "best" and because there was no proof that the reports of one or more of the six conductors who run trains with the prisoner, were correct.

E. A. Rucker (recalled). On the 9th of September last I employed four persons; Benedict, one of our men, Mr. Bridgeman, another of our men, Mr. Yost and Peter West; sent them out to take account of fares paid to Caldwell on the route from Chicago on the 9th, supposing he would return here Tuesday evening; gave them instructions; gave them marked money; called their attention to the marks as recorded in a book; assigned to each their respective positions in the cars; I can partly or wholly state from memory the marks on the money, and the different kinds of money, and to whom paid respectively; from recollection I state as follows: I gave to James E. Yost a $20 gold piece, forget the date, a hole was bored in one star by taking the point of my knife for a drill; on the reverse the cross bar in the letter A was scratched; gave him a $10 bill on Citizen's Bank, Fulton, Oswego County, N. Y., No. 1422, letter A. I marked that bill by making ink dots inside the rolls on the "0" in the "10"; this is the same bill testified to by Yost yesterday; after giving the bill to Yost I found it afterwards in the possession of Mr. Caldwell on Sept. 15th; I gave Bridgeman a gold eagle of 1849; one of the stars was bored; cross bar in A in "States" was

scratched; gave him two fives on the Merchants Bank, New Bedford, Massachusetts; I marked them; one was letter B, No. 200, the other letter B, No. 87; in the roll of the figure "5" I made an ink dot; the bills are here (producing them); I found these identical bills on the person of Mr. Caldwell Sept. 15th; the star over the head in the eagle given Bridgeman was the one bored; I received this from B. F. Benedict on his return; it is the coin identified by Benedict yesterday; I gave Benedict three $20 gold pieces each dated 1852; one of these Mr. B. returned to me. Yost returned to me some bank bills; one or two $2 bills; can't state definitely; he returned me all after deducting his expenses; Bridgeman returned to me the amount handed him, after deducting expenses; Benedict returned to me two $10 gold pieces and a $1 gold piece. One of the tens was the one I had given to Bridgeman; another thus returned had been given to West, date 1847; cross bar of "A" scratched. I gave to West a $10 gold piece and a $10 bill; the gold piece now handed me is the one; I identify it by the date of 1847; has the cross bar of "A" in States scratched, and a star in front of the face bored. The two $5 gold pieces were marked by a bore in the star over the top of the head; the other by a bored star behind the head. I had delivered those $5 gold pieces to be paid to Caldwell on a previous trip on the 5th of Sept.

I received those four pieces and a gold dollar from Benedict; the two $10 and two $5 gold pieces and the $1; the $10 bill I gave West was on the Oneida Co. Bank, No. 746; letter "A" dots in the roll of the "0"; I saw the prisoner on the 15th of September, Saturday; I had been looking for him during the day; saw him at seven P. M., at our office; had a conversation with him; Pinkerton was present and no one else that I recollect.

Caldwell came to our office with Pinkerton, who introduced him to me; I pointed to a seat in front room; Caldwell took a seat and said, "What about that woman." Pinkerton replied, that's not what we want to see you about, 'tis about the C. & B. Railroad. I told him he was invited there to talk of his connection with the C. & B. line; that Col. Hammond's suspicions were excited that he (Caldwell) was not returning the monies received on their account; that the matter was in our hands for investigation; that we had become satisfied Hammond's suspicions were correct, and consequently had invited him in there to talk the matter over with a view to some arrangement. About that time he asked, "What matter?" I then told him I would go over it again; he seemed taken aback a little and seemed confused; I told him that the superintendent of the C. & B. Railroad had had his suspicions excited that he (Caldwell) was not returning all the monies received for the railroad; that we had investigated it and become satisfied that he was not in the practice of returning all monies received on account of the company; that we had reported to Col. Hammond on the subject, and he (Col. H.) had referred the matter to us; that we had caused a more thorough or at any rate a thorough investigation; that we had become convinced beyond question that he

(Caldwell) was not in the habit of returning the monies received for fares; that we had proof to that effect and had called him in there to see if some arrangement could not be effected—or something to that effect. I said to him that we did not ask him to make any admission; that our proof was sufficient; that all we wanted was that he should make such settlement as would be satisfactory between him and the officers of the road. Caldwell again asked as before, "What matters? what settlements?" and appeared much confused. Pinkerton was the only other person in the room.

I told Caldwell all we wanted him for was to make an arrangement; didn't care to have it made with us; told him the company believed he had kept their monies.

I told him Col. H. had compared the amounts paid by him (Caldwell) with what others paid in, and found his to be less than that of the others; Caldwell asked if I thought that was a fair way; I replied it was; that Col. H. had taken the amounts returned by the conductors for the last four months, made an average, and then made a particular average of Caldwell's payments and found him largely behind; very largely behind the highest average; Caldwell replied that you couldn't tell anything by that, that some days were good and some bad; I told him he ought to return as much as the average; that they run round, and all had the same chance on the same days, and that he was one of the most popular conductors on the road; he said you could tell nothing by that; a man's popularity was nothing; I said he would be offended if I said anything against his popularity; he said he guessed that would make no difference then; Caldwell finally concluded that he would make no investigation nor arrangement for restitution; I told him I thought he didn't seem to apprehend his position or he would be glad to investigate the matter; that he had been on the road some two years; had the confidence of his employers until recently; that they had now detected his operations and had the evidence to prove it; that within the last month we had watched him closely; that within the last month he had received larger sums for fares per trip than he had returned to the company; that this was so for several trips; that if the matter were prosecuted criminally the result, in my estimation, would be that he would go to the penitentiary; that we had the proof to substantiate a criminal charge, and if one should be preferred the result would be as I stated; I think I took down the statutes and read a section to him; I explained that I did not do this to make any threats, or to frighten him into a settlement or arrangement; that his employers, though they had lost confidence in him and were aware that by making a settlement with him, should it become generally known, might become the subject of unjust imputations: but notwithstanding all that they were willing he should make reparation, tender his resignation, and quietly withdraw from the service of the company; that I thought he ought to be glad of the chance to do that; that the matter was not generally known; only myself, Pinkerton and

Hammond, and a few connected with our business—possibly Mr. Joy also; Caldwell replied, "that that wasn't so; that he had heard of it yesterday or last night 160 miles from here." That it was all over the road; that it was all out. Mr. Pinkerton, who had occasionally said a word, now addressed Caldwell; assuming that the latter was guilty, he placed the matter similar to my own statements, but in his own way; told him that now we had the proof, it was the proper time for him to make an arrangement. I told him the next step would be to take him into custody; that as it was late there could be no preliminary examination, and he would have to go to jail; he said he didn't want to go to jail; he had friends and could give bail; I told him it would be much better to take a different course; I offered myself to go out and find, or try to find a magistrate; suggested he could sit in the Sheriff's office while I did so; Mr. Pinkerton told Caldwell to stand up while he searched him; he did so, and I received the articles as Pinkerton handed them over. We reminded Mr. C. that it was late, and that we had better go over to the jail; he might stay in the Sheriff's room while I looked for a magistrate. He seemed fixed and irresolute, indisposed to move; he finally said he would like to see Col. Hammond. I said to Caldwell, "You don't pretend you are not deficient in your accounts." "Oh, no, nothing of the kind," was the reply. He said his wife kept his accounts of family expenses, and he wanted time to see how things stood; he said he hadn't had anything like the amount Col. Hammond said he had, as inferred from the averages. Caldwell repeated that what he wanted was time to see how much he was behind; that seemed the question with him.

I found on the person of Caldwell this (exhibiting it) memorandum book and papers; they have been in my possession ever since and are unchanged; before Col. Hammond came I asked Caldwell if he had not received a notice of some kind about paying over the identical money he collected for fares; he said he had not.

The bill marked "E A R" was found in Caldwell's vest pocket, with a package of $20; the $10 and $5 bills were found, I think, in his pantaloons pocket in a roll amounting to $185; they are also marked "E A R"; I had an interview with the prisoner on Monday, Sept. 17, at the jail; I told him the matter seemed in the course of adjustment, and hoped he would soon be out; I told him that we had agreed, or nearly agreed, on a plan of adjustment; I tried to cheer him up; he said he was ruined; he wished he had never come here; he said he had lived too fast; conversation lasted 15 or 20 minutes; finally he said he was very sorry about it, that he ought not to have used "the Company's money," or "their money," was sorry he had lost Col. Hammond's confidence. He said he was glad the matter had been arranged or settled or something of that kind. I told him I thought the matter would be arranged in an hour or two; I suggested he should come to our office and make out the report for his last two runs; he said he felt bad, wanted to wash and shave first; I suggested our of-

fice as convenient and private, as some assignments were to be made, etc. Caldwell expressed himself satisfied with the assignments or with the settlement proposed to be made. I told him that certain articles, his house, his lease, his watch and one hundred dollars of his money had been turned out, but I was not satisfied that he had turned out everything he had. I asked him about some gold that I thought he had a short time previous, some two hundred dollars; this was my only object in going to the jail. Caldwell said he couldn't produce the gold.

November 23.

E. A. Rucker (cross-examined). I found on the person of Caldwell, when we searched him, some of the identical bank bills I had furnished to the men sent out to watch Caldwell. Bridgeman did not return me any money that I had furnished to either of the other men sent out.

It was not my intention to draw confessions from Caldwell by threats of the penitentiary or criminal prosecution; I stated to Caldwell that his averages were largely behind.

When I first came in I said, "I'm sorry you can't arrange with Col. Hammond"; prisoner replied in effect that he was sorry too; I asked the matter and said, "You don't assume or pretend (or something like that) you're not behind"; he answered, "Oh, no, nothing of the kind"; had no conversation then about Caldwell's property; I didn't know Caldwell had been told about his averages; it was on my mind; after Hammond's first conversation with him; Caldwell remarked in substance that he wasn't behind so much, or didn't owe the company so much as Col. Hammond said; Col. Hammond told me that he didn't know why Caldwell would not settle, unless because he (Caldwell) was holding back something; I had purposely avoided speaking to prisoner in the first instance about the exact amount of his deficits and exact form of settlement.

After first interview with Col. Hammond, I told prisoner I was sorry that there was no settlement; he "was sorry" too; I said, you don't assume you are not deficient in your returns; he replied, "No, nothing of the kind;" Caldwell wanted time; I told him if he admitted his deficiency to the company, I could see no reason why he couldn't arrange the basis of a settlement then as well as on Monday; prisoner said his deficiency wasn't as great as charged.

I visited prisoner in jail because I believed he had a "hoard" or had some gold somewhere, and thought he should restore it to the company; prisoner looked bad; tried to cheer him; I said he would soon be about; he said he was sorry he came to this city; that he had been too extravagant or living too fast; that he had used "their" (the company's) money; that he had got behindhand with them; that this detection, or affair, would ruin him; it had got out, everybody knew it, and that he was ruined; I thought he was soon to come out on the settlement that I felt sure had been consummated or would be by his counsel, and I tried to relieve his mind; Caldwell said he was sorry he had taken their money; "I ought not to have taken their money;"

prisoner seemed to know the matter had been settled or would be definitely; prisoner said he had lived too fast or too expensively, and that was the cause of his taking the company's money; that was the cause of his trouble. Caldwell's house was searched the same night he was put in jail; his wife's person was never searched, it was never proposed; he has a child; I told him we had been to his house; asked his wife for his conductor's box. It was arranged that the prisoner should not be put in a cell the first night; he was to sleep on a cot in the hall; prisoner requested us to tell his wife where he was; this was what induced us to search his house; I told him I had been to his house; prisoner didn't ask for our authority; he asked to have a friend sent for with regard to bail; think he spoke of his having an attorney at our office; I did not refuse to help him get bail; I expressly proposed to help him get bail.

Mr. Blackwell. Did you tell Caldwell you never arrested a man without convicting him? No. I made some remark to that effect, that we (Pinkerton & Co.) were not in the habit of proceeding in these matters without being sure of the proofs and being able to sustain ourselves. It was not our purpose to operate on his fears. My purpose was to satisfy Caldwell's mind that we had full proofs of his deficiencies.

On Monday I told prisoner I had been to his house and asked his wife for his conductor's box; that she did not give it to me; prisoner replied, "You go to my wife now and she will tell you where the box is."

Mr. Blackwell. I was not acting for prisoner until late on Sunday night and had great difficulty in getting into the jail.

Mr. Stuart. You (Mr. Blackwell) can be sworn if you wish to get your statements before the jury.

Mr. Blackwell. I don't wish to be sworn and therefore make these statements.

G. P. Pinney. Have been a railroad conductor for several years; there are printed blanks for tally list furnished conductors. I don't know the course of other conductors in keeping their tallies.

Wm. H. Backus. I am conductor on the Chicago and Burlington Railroad. This tally-list is like those kept by myself. I never made but one like the one shown me; I could take the memorandum now shown me (memorandum found on Caldwell's person) and from it make out my entire report of a trip from Burlington to Chicago; the first marks "B C," I should read as Burlington to Cameron, 7 passengers.

Cross-examined. So far as my experience goes, the tally list exhibited here is the only one I have any knowledge of; it is like the one I made out—I kept that by putting down the stations and marks as I went along. A conductor's tally list and report often vary. I do not recollect that my money ever run short of my tally list—it would generally overrun. I can conceive that it might run short. The tally list is used simply as a memorandum from which to make out their reports. My practice has been to first make out my report according to my tally list; then count up my money, and what is over put in

between stations as nearly as practicable where it belongs and where it would fit. The chief object is to get the money. The tally list is solely for the convenience of the conductor. Have on one occasion run all the way from Mendota to junction before putting down a single fare on my tally list, trusting to memory to put them all down afterwards. In adjusting overplus, I should first put down as many through fares as possible, and place the balance as near as I could where it belonged. Have frequently gone entirely through a car without putting down any tally, trusting to memory. I generally put it down after I have reached the end of the car. Have sometimes gone through the whole train without tallying. There are many things which may interrupt the conductor in collecting fare. He may hear the engineer's whistle, intimating that the track is obstructed, which would stop him immediately. The business of collecting fare is a very small part of the conductor's duties. He has the time, the property of his employers and the lives of his passengers in trust, and necessarily, if fit to be a conductor, feels the weight of some responsibility. Alarms are of very frequent occurrence on roads in this country. I consider my principal duty as conductor to be to look after the safety of the train. Our instructions, I should think, are chiefly to this point. A conductor who has had experience, on hearing a peculiar kind of whistle from the engineer will leave all other kinds of business at once and look outside his train. These alarms are likely to happen at any time. Mistakes frequently occur in keeping tally; the conductor is often called upon to refund money taken through some error. The conductor does not return the tally list to the company—it is not regarded as his duty to do so. The tally lists of different trips may happen to be very nearly alike. Have no recollection of any instance when my money was short of what the tally list represented, but have heard of such. I have been conductor about four years. I think generally if I have collected more than one fare in a car I have not left the car till I put it down. I don't know the practice of other conductors. If a man gives me a gold piece in payment of fare I give him gold in exchange if he asks it; otherwise I give him bills. If I should receive money and not give change immediately, I should put down the tally at the time of receiving it, the same as if I had given change. Conductors are frequently called on to change money for passengers; it might at such times appear to an outsider as if he was taking fare. A conductor may frequently apply to a passenger to change money for him. I have often on receiving money before starting out got it changed into gold for giving change. I don't think a conductor could return the identical money received for fare, and attend to all his other business. It has been the custom for the receiver to return broken or counterfeit money to the conductor who took it. I believe it is the practice still. In taking one hundred dollars along the route from passengers, I think the conductor would not be able to return more than one half of

the identical money he received. This would occur from the natural necessity of changing money. It is altogether probable that in a short time after starting on the trip the identical money which he started with and that which he received from the first passenger would be gone. No instructions in regard to returning the identical money were ever given to me.

Mr. Blackwell. During your conductorship on this road did you have any difficulty with a man about a free ticket—a man and his wife having been on the train?

Mr. Stuart objected; he said he was willing to concede that mistakes will be made. The prosecution would rely upon its proof respecting fares for through passengers.

Mr. Blackwell insisted that the defense had the right to show that the reports made by conductors are open to many mistakes and errors—consistent with entire innocence.

THE COURT ruled that the defense were at liberty to offer any testimony showing that the reports and tally lists, such as had been offered in evidence against Caldwell, could be erroneous without guilt.

Mr. Backus. I recollect but one event of that kind; it was the case of a gentleman belonging to the New York Central Railroad; I had known him previously on that road; when I came round to him for his fare he presented Col. Hammond's pass from Burlington to Chicago; I took the pass and gave him a check; there was a lady sitting beside him, and I asked for her fare; he said she was his wife; I asked him if he had a pass for her; he said he understood his pass as including his wife, and that Col. Hammond so intended it; I said that the pass did not include her; and that I had no means of ascertaining Col. Hammond's intentions other than from the face of the pass; I told him he would have to pay her fare; he said that if he was to pay her fare, he preferred to pay for both; I told him that I had orders to collect fare from all persons not having tickets or passes. I told him that after I got here I would see Col. Hammond, and if it was intended to include the lady in the pass I would refund the money, for the pass was as good to me as the money. After I got here I did not see Col. Hamomnd that night; next morning I saw Col. H.; explained the matter to him, and he told me though it was not intended to include the lady, I had better pay back the twelve dollars and take up the pass; I did so, and I went out the next run, I paid myself the $12 by taking off of my report of the run two through fares. My money returned for that run was for two through fares less than was marked on my tally list. My report then of that run re-

ported money for two through fares less than I had actually received.

My report on that run was $12 less than the tally list called for. We often have occasion to strike out tallies. In going through a train in a hurry, we often ask a person for his fare. He may ask us the amount of fare to the next station; if we are not familiar with the rates, I might take out the list, and supposing he was going there would state the amount and make a mark, and after all the man would hand us a ticket. I would then have to take out the list and erase the mark, or the tally would show one fare more than I had the money for. When the train is long, or I am in a hurry, or many other things, might induce me not to stop then to correct the tally. Such mistakes might not occur. The whistle of the engine, or many other things might call away our attention from the matter at the moment. I run out last evening to Mendota; in collecting the fares I came to a gentleman who refused to pay; he said he had paid his fare at the office; that he had bought three tickets and paid $15 for them to Galesburg; that in the morning he had put his family aboard, and in looking after the baggage he had got left behind; that his wife had all three tickets and had gone on to Galesburg. I told him my duty was to collect the fare; that he must pay it to me, and if on getting to Galesburg, his ticket was produced, I would refund him the money. He paid me, but I did not go through to Galesburg that night, but explained the matter to the other conductor. If that ticket is not produced before I make my report I will pay the $5.05 I got from him to the company; and if the ticket comes I will refund him the money and out of the fares I may collect on the next run will pay myself, and report one fare of that amount less than I will actually receive. Mistakes in tallies are made by persons mistaking stations. Where we are convinced tickets have been purchased we refund. In such cases we pay ourselves out of the next money collected; persons with through tickets often stop at way stations. (We charge five cents more when tickets are not purchased.) At almost every trip persons with through tickets stop over. In such cases we give them blank tickets furnished for that purpose, which we fill out. No money passes on such occasions. We make no return of such tickets. They are returned the first time. We give a person who pays fare on the road, and wishes to stop on road, if he will pay through amount, a stop-over ticket. There is once in a while persons who pass over the road who are dead-heads. Have every trip some fifteen dead-heads to report. We report them as all others. Ministers of the gospel pay half fare. They usually pay conductors on the train. Half fare tickets are only sold at Burlington and Chicago, and when they come on board from all other places have to pay the conductor on the road. There were no half fare tickets sold in September. There are many irregular dead-heads who have only a pass for a single-trip. We report the pass as a ticket in dead-head report. A pass is the same as a

through ticket. Passes are not entered in the conductor's report, nor tickets, only the money collected. Tickets are sold at all stations. I understand that the reason for charging more on fares collected in the cars, is to compel the purchase of tickets at the stations. Cases frequently occur where a gentleman will pay the conductor the fare of one, two, three, four or five persons beside himself; they may be his family, or of the same party, and may not be able to get seats together—sometimes some of them in one car, and the others in another. He generally describes them, and when the conductor comes to them he passes them. At stations where the cars stop, persons frequently come into the cars, and meeting friends, sit down and converse with them. When we arrive at junctions or cross-roads, or places where we connect with trains on other roads, passengers who have paid their through fare frequently change their minds and wish to go on the other road, and ask for a return of fare. When such passengers have paid their fare in money, I generally refund them the rate for the rest of the road. I have refunded money in cases where the passengers have paid me tickets. But if I think the passenger will ever come back to travel over that road again I give him a stop over ticket, which is good for 365 days, or for ever. The mistakes I have mentioned are those most likely to occur to conductors in marking on their tally list; they are ones which have occurred to myself. There are many instances where a person in the car for the purpose of observing how many fares are paid may be deceived. I have been on railroads as a conductor for four years, and I think I am experienced enough to know that such things as I have mentioned are of frequent occurrence, and that persons sent there to observe may often be deceived. Aside from the general mistakes which such persons may make, there are others which would occur because of their not knowing all the circumstances and not hearing the conversation. A case occurred on the last trip; four persons got in with tickets to Galesburg, and before I came around to collect they had learned that they desired to go to Cameron instead of Galesburg. The fare to Galesburg was $1.05 and to Cameron $1.35, thirty cents difference. They gave me four tickets and $1.20. A person in the car not hearing the circumstances, would suppose that I had got four fares of $1.35 each, or $5.40, when in fact I had only got $1.20 in money. A person may pay me fares for himself and other persons who may be in another part of the car, or in another car, or in the saloon, and yet a person not hearing our conversation could not tell how many fares I had received; and when the conductor comes to the other passengers so paid for, the man who may be observing will not know but I pass them as persons entitled to have free passages. When we take half fares from clergymen, we give them a check like other passengers, and no one not hearing the conversation can tell whether we received full fare or not. Conductors sometimes get change of passengers; when he does so, a man not hearing the conversation

could not tell whether he was collecting a fare or not.

Mr. Blackwell. If upon a comparison of the tally list—of any run—with the amount of bank started with, and amount found on hand at the end of the run a conductor should find that his tally list called for more money than had actually been taken, and the conductor could not recollect or discover where the mistake was, what would be the course for a conductor as to his report, according to his duty? I can only answer by saying what I should do: I should keep my bank good, let the consequences be what they might. If the money is over it is put into my report, and if the money is short I see no reason why the report should not also be made to correspond with it. I take the money as my guide for the report in preference to the tally list. I make my report correspond with my money; always know when I go out on the train how much I have, and of course I ought to have that when I come off. When I get through, I always take my bank out of the money. If I have gold I make it up with that, taking my small change first; if I have not gold, I make it out with bills, and make out my report by the balance. We have instructions to put the amount of money in the report, and as far as we are able, to apportion it, so as it will go to the roads over which we run. If it be over I would apportion it as near as possible, according to justice to all three roads. If the money is short, I would make my report agree, as I never yet paid any of my own money to the company. I would make a deduction from the through fares. Often I have not put down a fare in the tally list knowing that I had not done so, but also knowing that I was about something more important than putting down that fare. On all the roads where I have been, conductors have to make their money good

G. P. Pinney. Was conductor on Chicago and Burlington Railroad for four years, up to the 1st of this month; am not now; agree with the general statements of Mr. Backus; the tally lists do not indicate in all instances, accurately, the amount of money received by a conductor; I don't see how a man watching the conductor could know exactly whether the passenger was paying through or way fare; have had passengers pay me to Newark and afterward conclude to go on to Burlington, and pay the additional fare.

Deacon A. Harvey. Am a conductor on the Galena Railroad. The tally list of a conductor is not with me an accurate list to make out report from; I remember one time when my cash was short of the amount called for by the tally list; very often my cash overruns from $10 to $40; don't know what the tally list is for; had supposed it was to keep the statistics of the several stations, but think it is not so. Mistakes will occur sometimes; within this week have known instances; don't think the tally list important; very ferquently ask passengers for change and am often asked by them for change; in dark nights mistakes are made tallying. We make up our reports to fit the money paid over; it isn't our intention to keep the tally list accurately; I consider it of no ac-

count; we can't keep it accurate; don't consider it of the least importance; it is of some convenience to the conductor as an approximation; I think we might as well pay over the money in a lump; we have no different lines or corporations over which to apportion surplus monies not accounted for in the tally list.

I wouldn't swear my report was right; my money would be right or nearly right; never have received any instructions about tally lists; don't return tally lists to the office.

THE COURT—Proceed with your testimony.

Mr. Dickey—Mr. Blackwell has been absent some minutes—he has the programme.

Mr. Blackwell was called—after some fifteen minutes:

The Sheriff—Mr. Deputy, go down to "Young America" and see if you can't find Mr. Blackwell.

After waiting some time the COURT took a recess of forty minutes.

David Remick. Am running a passenger train on the Chicago and Burlington Railroad; have run but a few months; have been on the road two years; have been in the ticket office at Burlington; left it because a company of us had engaged in a railroad enterprise, but would have left anyhow for the sake of having some out-door business. I agree with the general statements of Mr. Backus; the tally list is not an accurate test of receipt of fares; I invariably had more money than called for by the tally; the first train I run out I had a surplus of $27.60; on one occasion there was a family of four persons, the man had the tickets and got left; I took the money from the three on the cars, and the next day redeemed the tickets; this made a discrepancy between my tally list and my report.

T. F. Cody. Am conductor on the Chicago & Burlington road—I agree with the general statements made by Mr. Backus; tally lists are never accurate; have several times had less money than called for by the tally list; conductors of night trains have frequently made mistakes in marking on the tally list; I have made such mistakes myself often; the light in the cars is not so good as daylight; alarm whistles frequently call conductor's attention; the treasurer directed me to pay over the identical money taken for fares, so far as possible; I have a bank of $40; seldom have any of my own money mixed with the bank; think it not possible to carry out the orders of the company in all cases; think under many circumstances I could keep track of the money I took; before the circular was issued, the conductors were in the habit of buying change at the brokers; I have exchanged gold with employés along the line of the road as a matter of courtesy.

The money usually overruns

the tally lists—if otherwise, it must be the result of accident—perhaps by giving a $10 bill for a $1; a year ago this summer I made a mistake in footing up; such mistakes are rare; I like the form of tally list used on the Chicago & Burlington R. R. much better than any I have seen; it is almost impossible to make a mistake on the tally lists now used by the Chicago & Burlington line; it is plainer, the tariffs are all before the conductor, and in such a way that he can't well miss.

Chas. Green. Am conductor on the Illinois Central Railroad; have been on the New York and Erie Railroad some five years; I concur in the statement of Mr. Backus; on our road we use no printed tally lists; nothing but memorandum books; have had my cash short of tally list seldom—often a surplus; change cars once between Amboy and Dunleith.

Simon Sanborn. Have been a conductor on the Illinois Central Railroad for six or seven years; since January last. I agree with the testimony of the other conductors in regard to the liabilities of making mistakes in tallying. The tally list is not an accurate basis for making out reports; very frequently falls short of my money, and my money sometimes comes short of my tally list. It has done so several times; I could not say how many.

I do not consider the tally list reliable as a basis of making reports. There is no tally list provided for conductors on our road; I use the same form which is used on the Galena road; I use them only as a guide for making up reports; I have had my money fall short of my tally list since. I have been on the Illinois Central road; think it was but one occasion; cannot state the precise amount; think it was less than $10. My whole receipts on that trip, I think, were not over $100; did not report from tally list on that occasion, because I could not. I generally take out my bank and return the rest to the company, be it more or less. I do not consider a tally list as of very great importance. We take pains to have our tally list as correct as we can. My receipts have never exceeded $100 on any one trip. I am acquainted with Mr. Caldwell; have known him ten or fifteen years; knew him in Rochester, N. Y.; I was part of the time conductor on the New York and Erie Road; I was a clerk in Rochester when I first became acquainted with Caldwell; he was part of the time a bar-keeper—part of the time he kept a saloon.

Chas. E. Follet. Am general ticket agent for Chicago and Burlington road; am acquainted with the business of the ticket office at Burlington. Something over $17,000 passed through that office last month. There is no chance for stealing from that office except by collusion with some conductor.

Cross-examined. During April through tickets were sold from Chicago to Mendota; commenced selling through from Chicago to Burlington about the first of May; I made my statements from the paper now handed me (table of averages); that statement contains the dollars and cents of each conductor taken during each trip; if the conductor received $2,000 for May, we divide the

amount by the number of trips; from first of May to first of September, nine conductors were on the road, not uniformly; including Mr. Caldwell, there were five conductors all the time on the through trains. The following were the averages of the conductors.

Conductors	Amount	No. Runs	Averages
G. P. Pinney...	$6,770.60	57	$118.78
S. Hatch	6,707.13	60	111.78
T. A. Cody	5,861.95	60	97.70
S. Allen	5,354.87	61	87.78
O. T. Caldwell..	4,282.01	56	76.46
Total	$28,976.56	294	$98.56

November 24.

THE SPEECHES OF COUNSEL

Mr. McIlroy opened on behalf of the People by reading from the section of the statutes defining the offense charged against the prisoner.

One of the authorities relied upon in the application of the statute to this case was in Wharton, p. 596. The defendant was charged with embezzling the funds and monies of the Chicago and Burlington Railroad line, while employed by that company as a servant and conductor. It may not be disguised, Gentlemen of the Jury, that this case is one of unusual interest. The crowd that has thronged the court room has shown you the public interest. The prisoner is a young man with many friends and sympathizers; it is natural and proper it should be so. On the other hand the People have no sympathizers; they need none. We rely and desire to rely solely on the law and the testimony without the aid of other influence.

Counsel for the prisoner would be glad to have you believe that this prosecution is by a corporation; it is not so—the prosecution is by the People of the State of Illinois.

It has been shown to you that the prisoner fully shared the confidence of his employers; according to his own statement "Mr. Hammond had acted to him (Caldwell) like a father." It is also in evidence that while the prisoner was running a train at a salary of $720 per annum, he was offered a situation in the ticket office at Burlington at a salary of $1,000 per annum. Now mark; while running the train he was obliged to be up all night, and away from his family several nights in the week; besides that he was living in this expensive city

where the cost of living is more than double what it is in country towns. To a country town like Burlington, gentlemen, the prisoner might have gone, and in a very pleasant and honorable position have earned $280 more per annum than he was earning as conductor—would have had regular hours of work and rest, and would have been with his family all the time. What is the inference when a man declines this superior position with less unpleasant labor and an increase of pay, and seeks to continue in the lower salaried position, where he is, at the same time, away from his family? Does the fact that there are such checks and guards and vouchers to be given in the ticket office, that stealing is almost impossible, throw any light upon the subject? Is the report true that while a conductor's salary is nominally $720, it is easily made worth $1,200 or $2,500 even? The facts are before you; you will draw your own inferences.

You will be told that the agents of the detective police are eminently depraved men, and such epithets as "vipers," "spies," "scoundrels," "jail-birds," *et id genus omne* will be considered so essential to the defense of this unfortunate young man, that his counsel will hardly be able to get through without emptying them on the segregate and aggregate heads of the officers in the service of Pinkerton & Co. I will only remark in this connection that none but the evil-minded need fear the chiefs or the subordinates of the North Western Police Agency. It is well known that men's opinions of the law are affected by the drawing of lines of distinction, as halters and the like.

The result of the carefully planned watchings of the prisoner on his runs of the westward and eastward trains on the 9th and 11th of September, were conclusive as to his guilt. The further discovery of large gold coins on his person at the time he was searched—marked coins that had been paid him for fares by the detective policemen—consummated the legal proofs of the embezzlement.

The appearance of Caldwell when informed of his detection by Mr. Rucker, was all against him, he simulated great sur-

prise and confusion. Gentlemen, a railroad conductor is too much of a cosmopolitan to be astonished—at all events, to be confused and overwhelmed by any such announcement. If innocent, he might be indignant, but never so confused and overwhelmed as not to know whether he was innocent or guilty. Conductors travel farther in a day and see more new faces, more varied and exciting scenes, more of life and incident in a single day, than many people see in all their lives through. His appearance, therefore, in the presence of Col. Hammond—his professions of overwhelming embarrassment, make powerful assaults on the presumption of innocence. Of the same force and in the same direction are the partial negotiations of Caldwell to make restitution to his employers and the extraordinary conclusion to which he arrived in deciding to take the risks of a public trial. Was the chance of escaping a conviction risked for the sake of an after civil prosecution of the parties who detected and arrested him; or was the chance of conviction—with the possibilities of pardon or a new trial, of a verdict set aside, etc., etc.—preferable to the disclosure of the hoarding place of his gold insisted upon by Mr. Rucker?

Would the defense dare to take up and bring in here a "flash" saying he had heard used on the street, by those whose interests or fears made them enemies of the prosecution, viz.; "they all steal"—why single out Caldwell? A declaration so pernicious to the *morale* of society would hardly be made in this temple erected by society to justice. If such a sweeping charge against the honesty of conductors as a class were as true as I hope it is false, would it be a reason for the acquittal of the prisoner? Would it not enhance the necessity for a thorough legal investigation of this case, for the doing of strict justice here that the alleged debauchers of the railroad service might be arrested?

And this brings me to speak, in concluding, of the position of "soulless corporations," as the defense would represent all railroad companies. Gentlemen, you will not allow yourselves for one moment to be prejudiced against the associations of enterprising men who are building those iron

highways upon which the world is being borne forward with marvelous rapidity of progress in all that is physically prosperous and socially elevating. No man is rich enough to build a railroad—it must be by bodies of men uniting their means and incorporating themselves for unity of action. And of all men that should be, if not profoundly grateful, at least disposed to extend the protection of the laws over such corporations and their property, the people of Illinois, the citizens of Chicago are first to be named. Their position in this court is only that of individuals, asking for protection and the dispensation of justice in the name of "the People of Illinois," whose interest in this matter is infinitely greater than theirs.

Mr. Dickey: In the course of a long practice this is the most extraordinary prosecution I have ever seen. In my childhood I had heard of persons being brought before their triers, and presumed to be guilty, until he established his innocence. Never before this occasion have I felt the presence of such an influence buoying up the prosecution and crushing down the defense.

Let me recapitulate the points in this case; and in the first place with regard to this extraordinary institution called the "Northwestern Police Agency;" and in the outset I am free to say that I do not believe Mr. Rucker (of the firm of Pinkerton & Co.) would for one moment continue the prosecution of a man whom he believed innocent. Rucker has undoubtedly come to believe that this prisoner is guilty. He (Mr. Rucker) is a man of as much intellect as I have met in this city, and possessed of the most extraordinary shrewdness. But the character of this prosecution is nevertheless the most cold-blooded, cruel and callous I have seen in twenty years' practice. I hope I may never see the like again. I shall not stoop to excite prejudice against the prosecution by talking of soulless corporations; I shall proceed at once to a brief review of the case, commencing with his arrest by Pinkerton and the conversation between the prisoner and Rucker and Col. Hammond.

With reference to Col. Hammond, I have to say that while it

is not my practice to abuse or traduce a man simply because in the trial of a case he comes in my way; on the other hand no man's station is so high that I cannot criticise him. Col. Hammond would not, it is true, knowingly injure an innocent man; would not charge this conductor with stealing if he did not believe him guilty. But, gentlemen, Col. Hammond is a peculiar man; his positions in life have been such; his character has been so molded by the powerful influences of exact public service, that he has come to expect not only the most rigorous performance of duty, but has so long dealt with subordinates —not to say inferiors—that he has come to believe that he is always right, and those whom he opposes always wrong. Wherever he sets his foot there it must remain; he is a man of iron will; and if anything gets in his way it must be crushed into the ground, or it must remove. In his treatment of subordinates he might be compared to the father who made his child stand on one foot all day for the good of his soul. Hammond tells us that when he first went into the interview with Caldwell at the office of Pinkerton & Co., he assumed that Caldwell was guilty, and soon after said, "You know, Mr. Caldwell, that I have always treated you like a father." "Yes," replied Caldwell, "you always have treated me kindly and like a father." But what is the subsequent action of this kind father? Why, he leaves the prisoner to the tender mercies of Pinkerton & Co., and pursues him in this criminal prosecution.

Caldwell, in the first place, is approached by Mr. Pinkerton, who, with a profound cunning, inveigles him to the office of the Northwestern Police Agency on the pretence of making some communications or receiving information about "a woman." But arrived at the office, he was informed that certain deficiencies had been discovered in his returns. He was assumed to be guilty.

Now, a great point is made by the prosecution because when Caldwell was first charged with having kept the company's money he did not deny the charge, but soon after spoke of time to arrange his accounts, so that he might know how much he

was behind. Was it wonderful that he should be confused and want time? Here were the nets of Pinkerton & Co., gathering in around him—Pinkerton & Rucker compared with whom Talleyrand was slow and stupid! Caldwell asked for time, but he was pressed to settle, urged to make over his property, etc., with very distinct intimations of a criminal prosecution if he declined. But he did decline, and was arrested—arrested without authority, searched and marched to jail. No preliminary examination, no opportunity to get bail, or to see his friends or to procure counsel.

When the trial comes on, it is noticeable that the quartette arranged and composed by Pinkerton & Co., do not dance round the prisoner. Yost is here, Benedict is here, and Bridgman is here, but West is not produced. Yost appears like an honest boy who was enveigled into this business by Rucker. But Benedict is "a thief set to catch a thief."

Of Bridgman's previous history we know nothing, save that he was a man-of-war's man, and that his family are living in Washington. These witnesses testify to paying their fares to Caldwell, in money, through to Burlington, and returning. Two of them also testify that they saw two ladies pay their fare through from Burlington to Chicago, on the eastward trip. Now I must state that I believe this latter statement to be a manufactured lie. I believe the witness swore to that for the purpose of making the number of through passengers on the eastward trip correspond with the number of passengers marked opposite the letters "B. C." in the tally list found on Caldwell's person on the 15th.

I exonerate Mr. Rucker from all intention to wrong a man whom he regarded as innocent, but he thinks Caldwell is guilty. Rucker is a man too upright to swear to a willful falsehood but his service as a detective agent has rendered him incapable of distinguishing between guilt and innocence and he always assumes his victim to be guilty. Acting under the belief of Caldwell's guilt and urged on by a powerful thirst for victory, with the obliquities of his mind, resulting from the life he leads, I insist he is incapable of giving an account of

the evidence between him and Caldwell which might be relied upon as a fair and faithful picture of the reality.

It was well for Caldwell that in spite of the pit prepared for him by these keen and able men, he did not buy his peace, as in a moment of weakness he had well nigh done. Many men, while conscious of their innocence, have yet concluded it were wiser to buy their peace and avoid the ignominy of a public prosecution; he refused, and appeals to a jury of his peers for an honorable acquittal on the charges brought against him.

Mr. Blackwell. The crime charged against Caldwell is the blackest on the black catalogue of crimes. Mr. Caldwell was the trusted agent and officer of the Chicago and Burlington Railroad Company, and if he abused that confidence and stole their money, he ought to be punished. No crime is more difficult to be proved, none more difficult to defend against than this of larceny and embezzlement. But I insist you shall be sure of the clearest evidence, before you give a verdict that he is guilty.

If there is a man on this jury who believes in his own infallible judgment, who is unwilling to listen to the arguments of counsel, I hope no client of mine may ever again fall into his clutches—such a man is no better than an obstinate mule—we are all fallible; however much you are oppressed by the protracted length of this trial, I beg you will consider the public interests not only, but the interests of this prisoner now in your hands. Your minds should be as blank pieces of paper receiving impressions from the law declared by the court, and the evidence produced before you.

I wish you to commence with the presumption of innocence, which indeed is the obligatory injunction of the law upon you. You are entirely to disregard the finding of the Grand Jury because before that body there was no examination of the witnesses for the accused.

The prosecution relied upon proofs of the receipt of certain moneys and a failure to report and hand over to the company; in the third place they depend upon proof that upon

making an average of the receipts of all the conductors on the line for four months, it appeared that the prisoner's returns of money averaged much below that of each one for each one and below the average of each and all for the whole time. Our position is that the prisoner is to be presumed innocent until every reasonable doubt of his guilt is removed.

There was in this case a power behind the throne greater than the throne. The throne was the people; the power behind it was the Chicago and Burlington Railroad. At the head of the road was Col. Hammond; the immaculate John Wentworth had dubbed Hammond a Colonel, but I prefer to call him by the name he himself assumed while on the stand, Father Hammond. Hammond opens to Caldwell with, "I have always acted as a father toward you," and that Caldwell answered, "Yes, you have been kind and a father." Now this "kind father's" conduct to this "adopted son" from the day to this hour will pass in review before you. Father Hammond employs spies and emissaries not so much to detect Caldwell as to confirm his own suspicions. Pinkerton & Co. are employed and put on the track of Caldwell.

The tables of averages of the reports and returns of monies collected by the conductors on the Chicago and Burlington line for a period of four months, had cut quite a figure in this case. They ought not, in my opinion, to have been admitted in evidence. Mr. Follett, who made them out because he was directed to, first made them out in a just and proper manner, viz: from April to October. But this did not suit the purpose of Mr. Joy and Father Hammond. They sought to cipher out the guilt of Caldwell, and so they ordered the Receiver to prepare a table of averages from a subsequent time. It is evident, as the jury evidently saw, that the longer the period of time included in an average the more just would it be to all parties. But an "average" of this kind was unreliable in the nature of things. It was in testimony that the receipts of conductors on that road varied between $15, the lowest, and $490, the highest receipts for a single trip. With the pendulum of receipts oscillating through so extended

an arc, how could counsel offer a table of averages between seven conductors for four months and upon it base a criminal prosecution? The testimony shows Mr. Follett, as he said himself, had not been ciphering out the conviction of Caldwell in the performance of his regular duties, but was expressly directed to make up such tables by his employers—and to use his own words, "he did no more than he was told to." When the large 4th of July receipts were taken out of the averages (Caldwell ran no train on that day) it materially reduced the average discrepency between prisoner's returns and those of other conductors.

Mr. Blackwell alluded to the official statement that had been made that he was a frequenter of Young America drinking saloon, and that the statement had been reported by the public press. He had already stated that on the occasion referred to he was not at the Young America. But if he were a frequenter of that place he might be expected to have Young America blood in his veins, and the prosecution might have an opportunity of seeing the effects of the contents of Young America on hot blood.

He also alluded with much feeling to the violent attack that had been made on the prisoner and on his friends and counsel by John Wentworth in the *Daily Democrat*. The defense were characterized as "blacklegs," who were seeking to bring an outside influence to bear on the jury in this case.

The prisoner in this case, if clearly proven guilty, was guilty of one of the worst of crimes and ought to be punished; if he was not guilty as charged, then indeed was he deserving of sympathy. Every night during this trial he had been watching by the bedside of a sick wife; throughout the day he sat here listening to and defending himself against his powerful accusers. His wife was still sick and expecting to be confined every hour.

Mr. Stuart. I feel the great responsibilities of the hour; I think I know what my duties are, and I hope I have the discretion, as I know I have the firmness, to discharge them. My generous opponent (Mr. Blackwell) may be assured that I feel

quite as sensitive as he would seek to make me feel with regard to the embarrassments necessarily surrounding a stranger who has no personal relations with any who hear him. I am a stranger, gentleman, to you and to your people. I have come here at the instance of the President of the Chicago and Burlington Railroad Company. Able counsel had been employed for the defense; the Prosecuting Attorney was encumbered with an unusual press of criminal business, and with the exception of Mr. Arnold the members of your Bar were generally preoccupied; under this state of things it was thought advisable that I, who chanced to be an old personal friend of the President and of the Superintendent of the road mentioned, should bear a part in this case. All this will not make one hair white or black—it is with the proofs we have to deal, it is alone with the pertinent facts in the case that I will consume your time.

It was intimated that the People have no farther interest in this trial, that the Public Prosecutor has abandoned the prosecution because other counsel have been employed by the railroad company to support Mr. McIlroy, and also because up to the time of the presentment by the Grand Jury the People, as represented by their regular officers, knew nothing of the prosecution, took no initiative, nor felt any interest in the case. Well, suppose this were so? Is it unusual? Of the hundreds of indictments found every year in Chicago, how many are the citizens informed of beforehand? It is in the nature of the case that, almost always, the initiation of a prosecution is at the suggestion if not by the act of private individuals, or, it may be, of a corporate body, and the rest of the community do not know and need not know of the matter until the day of public trial. At this hour do the people know what officers of the law are on the track of an undetected criminal? Do they know the crime and its circumstances? Need they know? Nevertheless, prosecutions are not individual enterprises; the style of a criminal prosecution is "in the name of the People of the State of Illinois." If all the people rose *en masse* and with one acclaim prosecuted

a man, would it not be a good, a lawful and a proper prosecution? Then if the Prosecuting Attorney is aided by one man or a hundred, by one corporation of men or by several associations, is the prosecution not also proper and every way just? So much for the waste of words about the People being supported in this case by the Chicago and Burlington Railway Company.

The principal officers in charge of the Chicago and Burlington Railway discover strong probabilities that one of their employés has repeatedly converted to his own use the company's funds; they go to the Police Agency in this city and complain of these depredations—they wished—if forced into a criminal prosecution—to produce a salutary effect upon the *morale* of railway service; they preferred first to satisfy their own minds of the guilt of their conductor, and then to obtain, if possible, some degree of restitution. Was not all this in the usual order of things? Was the conduct of Messrs. Joy and Hammond "inquisitorial." It was not competent for them to proceed personally in all of the investigation preceding a prosecution. The organization of a municipal or an independent police department is elaborate and requires all the attention of its members. They therefore, and very properly, sought the aid of the Detective Police Agency, firmly established here by Pinkerton & Co., and conducted so skillfully, so successfully and with such undeviating integrity to all parties, that it has become a beneficent institution of the Western country. The chiefs of this organization are deputy sheriffs, authorized to make arrests; they have organized a system of espionage, having extraordinary facilities for the detection of crime. Undoubtedly they have done this with the expectation of reward in money as well as in the public reputation, which Mr. Rucker frankly confessed, on the stand, was a part of his expectation in the event of success.

It was admitted by the senior counsel for the defense, this morning, that Mr. Rucker was a man not only of marked abilities, but more than that, of unquestioned integrity; a

man who would never assist in prosecuting a man of whose guilt he was not entirely convinced. Indeed the admission, frank as it was, is only demanded by the facts of the case, while in the whole history of American jurisprudence there is no instance of a conspiracy on such a scale as this to prosecute an innocent party.

It appears that Oscar T. Caldwell, the prisoner, was formerly engaged in a ticket office at LaSalle, Illinois, with a salary of $1,000 a year, and that while holding this office he applied for and received a conductorship on the Chicago and Aurora Railroad, the salary of which was but $720 per annum. It has been suggested that one explanation for this unusual course of leaving a large salary for a smaller one, was because of the preference of his family to reside in this city. Perhaps it was so; I by no means think it conclusive of Caldwell's guilt that he resigned the ticket office with a salary of $1,000 and went on the cars at $720. But it appears that at a subsequent period he held the office of ticket agent in this city, having resigned the conductorship, at a salary of $1,000 per annum, and that while in this office—the work of which is light and at regular hours—here where he was constantly with his family who were now living in the beautiful city they had so much desired—that while in the ticket office in this city, while in such excellent health, that he never so much as complained of the few hours' confinement within doors, he applied to Col. Hammond for a train of cars on the Chicago and Burlington Road, and was appointed conductor at a salary of $720. Here again was a loss of $280 per annum by the change of position. More than this; the duties of a conductor are onerous, and his hours irregular. In this case he was up for all of two or more nights during the week, was absent from his home and his family one-half the time, and all this increased exposure and enhanced laboriousnes for $280 less salary! What are the inferences? Gentlemen, I do not insist upon this as proof of guilt, but I urge upon your attention the consideration of these significant acts, these most suspicious circumstances, that you may see how the confidence

of Col. Hammond was displaced by fears, how his fears became more than realized when the investigations produced their results.

The first result of the investigation was the startling fact that Caldwell was uniformly behind the other six conductors on the road in the amount of monies reported and returned as collected on the trains. The tables of averages you will take with you in your retirement. They reach over a period of four months, and exhibit his average receipts for each week, for each month and for four months; also the average receipts of each of the other six conductors who ran with him, also the average receipts of Caldwell for each month as compared with each of the conductor's, and his average total receipts for the four months as compared with the average total of each of the other six. The result of these careful calculations was the discovery that Caldwell uniformly reported less money than any other conductor; less for each week, less for each month, and less for the whole period. Remember, gentlemen, that the seven conductors on this line "run round," as they phrase it, so that in turn each had a chance at the heavy or light receipts of each day in the week. These demonstrations convinced Col. Hammond that he could no longer, in justice to the Company, permit Mr. Caldwell to hold the office of conductor, in which character he was receiver of their monies on the cars; he could not let the matter pass, though his feeling for Caldwell was such that the steps he was forced to take were most painful.

Col. Hammond, after seeing the results of the tables of averages, applied to Pinkerton & Co., for their services in ascertaining the existence of positive proofs of the criminal practices of the prisoner. Pinkerton & Co. said to Col. Hammond, "Your business on the trains is so conducted that it is difficult to detect peculations. You have no checks, no vouchers, no guards of any description. We know of nothing better than to place men on the trains who will watch this conductor, who will ascertain the number of passengers and the amount of fares on a given trip, and who shall pay their

own fares in peculiar and marked money." Now, gentlemen, right here let me ask, had Oscar T. Caldwell been an honest man would he object to being watched in any manner, would not the result of such watching have been conclusive of his innocence? The witnesses sent out on the 9th reported the number of fares paid Caldwell from which it appeared, among other convicting circumstances, that on the return trip Caldwell received seven through fares and reported but three. When the person of Caldwell was searched there was found several of the identical marked bank bills paid him by these witness—bills too large to be needed for "change"—and a tally book in the prisoner's hand writing which confirmed the statements of the witnesses and proved the falsity of his report and return of monies. The reports of the witnesses were made several days prior to the arrest and consequent discovery of the tally book.

The admissions and confessions of the prisoner conclude my brief allusion to the points of evidence relied on for conviction.

The application of savage epithets to gentlemen connected with the Northwestern Police Agency will only commend itself to the fears of those whose conduct will not bear scrutiny, or to the hope of revenge in those who have been detected. The substantial citizens, the right thinking men of Chicago, not only indorse the character of Pinkerton and Rucker—they do more; they believe them among the most useful members of society.

In placing four men upon the cars to watch Caldwell, Pinkerton & Co. did not anticipate the collection of so much positive proof as would form the basis of a criminal prosecution. But in the order of things there were occurrences not looked for. It was through no success of the "spies" that this tell-tale tally book was found on the person of Caldwell—this fatal tally book with the convicting memoranda in the hand writing of the prisoner. Thus ever with crime. It is a law of nature, of the God of nature rather, that crime is forever its own detector. The man who is unwise enough to

commit crime is therefore weak enough to leave disclosing tracks behind him. The lines of all nature, whether in the spiritual or the physical, run parallel and straight, and, like the chords of a harp, when a deviating and discordant hand sweeps over, they give out the harsh announcement of the crime. By the mysterious laws of this wonderful human organism a series of concealments is not permitted. Man is not morally amphibious that he may elect to live in the element of crime; cunning ones may contrive to remain for a brief time under its polluting waves, but, like the diver for hidden treasures, they must quickly come again to the surface and the light. Were it otherwise society must crumble.

The zealous counsel for the defense seek to weaken the testimony of the four "spies" who went out with Caldwell on the 9th and returned on the 11th, by attacking the character of one, and the accidental pecularities of the two others brought on the stand. Bridgeman is characterized as a "galvanized marble statue." The meaning of this unfortunate conjunction of irrelevant words is not apparent. I never saw a galvanized marble statue. But, gentlemen, if the immovable, unexcitable countenance of Bridgeman is intended, I have only to say that it is as his Creator stamped it. He is, we admit, a man of few words; it is characteristic of his profession as a detective policeman, a profession in which he excels. The fact that his family are in Washington city is his misfortune and theirs; he has not yet earned money enough to bring them on here; but is Bridgeman the first man who, unable to find profitable employment in the older cities, has worked his way hither trusting to employment that will enable him to send money for their passage to this land of plenty?

In the universal splurge made by one of the counsel for the accused, an almost dramatic effect was attempted on the unwarrantable declaration of their own, that the witness Benedict was a State's prison bird. Without consuming any time, it is enough to state that the B. F. Benedict called as a witness here is no State's prison bird—"the man who convicted him

is not in this room." Some Benedict may have been convicted somewhere—not this Benedict. Without saying an ungraceful thing of this beautiful city, whose hospitalities I have enjoyed, it is patent that if Pinkerton & Co. had need of scoundrels and State's prison birds they had no need of going beyond the purlieus of Chicago.

But observe the transparent motive, effect upon the jury, of this attempt to prove Benedict a convict, of this attachment taken out for him! Did they propose to bring him on the stand again? No, for they knew he was in a distant State. Could they attack his testimony? No, for it is substantiated and corroborated by other witnesses, and by singularly conclusive corroborating circumstances, the finding of the marked gold coins, etc. Could they insinuate that Benedict did not go out on that 9th of September train, did not pay the marked money to Caldwell? No, for they volunteer declarations of the integrity of Rucker, and Rucker swears Benedict did do these things. More fatal than these even are the conclusions of the evidence against the prisoner; Benedict and Bridgeman, corroborated in points by Yost, testify to seven through passengers paying fare from Burlington to Chicago on the 11th. Caldwell's tally-book testifies to the receipt of seven through fares from Burlington to Chicago, on the 11th. This gentlemen, is an instance in the manner of which this defense has rushed upon its destruction in assailing the testimony for the People.

Gentlemen, I call particular attention to the qualities of the defense. Is it honest, or is it fraudulent? If fraudulent, you will be sure it was adopted to cover up something. I now undertake to demonstrate that this defense is fraudulent with regard to this tally-list—purposely fraudulent. It was a point in the defense to prove that the memoranda "B. C. 7," in Caldwell's tally-list, indicated 7 passengers from Burlington to Cameron and not to Chicago, whereby the testimony of the three witnesses to seven passengers from Burlington to Chicago, was to be discredited. A triple chain is hard to be broken. But harder is it to establish a lie. The tally-list

indicates in "B. C. 7" seven fares to Chicago and not to Cameron, because, 1st., the tallies are the first made when the conductor passed through the cars on leaving Burlington, and if these do not indicate Chicago, then no through fares are talied to Chicago on that trip; but the report of the prisoner shows there were Chicago passengers on that trip. 2d. Where "Cameron" is meant "Cam." is the abbreviation; 3d. The marked money paid by some of those passengers for through fares, was found on the prisoner; but 4th, Cameron, the 5th station coming west, is reported by Caldwell himself in his written report "NONE!" Thus have the defense fallen into the pit of their own digging. Caldwell reports that there were no passengers from Burlington to Cameron on the 11th of September. And he does report (though less than the actual number) through fares from Burlington to Chicago. Here is one demonstration of a fraudulent defense.

Counsel for the accused admit the testimony of the boy Yost to be true; now Yost corroborates the testimony of Benedict and of Bridgeman in very important particulars; this will have its due weight with you.

This proof of a fraudulent defense reacted upon the prisoner, for it was a defense directly suggested by him.

The testimony of Rucker, Yost, Benedict and Bridgeman separately, and taken as a united and interwoven whole, present it as a welded chain, no link of which can be weakened. Yost, Benedict, Bridgeman and West were the four men sent out on Caldwell's train of the 9th and who returned on his eastward train on the 11th for the purpose of paying their own fares in marked money and reporting the number of passengers and fares. All were provided with marked money and particular instructions. Yost was provided with a gold double eagle and a ten dollar bill, both marked. To Bridgeman was given a gold eagle and two five dollar bills. To West a gold eagle and a ten dollar bill; to Benedict three double eagles. Each coin and each bill given the witnesses was distinctly marked. Now, gentlemen, let us see the result of this carefully prepared plan.

On the person of Caldwell, at the time of his arrest (Sept. 15th), was found the identical ten dollar bill, No. 1422, letter A., Citizens Bank, Fulton, Oswego County, N. Y., that Yost testifies to having paid him for fare on the 11th. Why was this money not reported and returned to the company for whom he received it? Are ten dollar bills the most convenient for change? At the same search of Caldwell there were found on his person the two identical five dollar bills, Nos. 87 and 200 on the New Bedford Bank, which Bridgeman had paid for fare. Were these retained for change? Benedict returned to Mr. Rucker two eagles and a one dollar gold piece; one of the eagles was the identical coin (marked) that Rucker gave to Bridgeman on starting; the other was the identical coin that Rucker marked and gave to West to pay his fare coming eastward from Burlington. The sum of $205 was the amount found on the person of the prisoner, at the time of his arrest, among which was the marked money I have described. The memoranda or tally-sheet I have already alluded to.

Now you have seen that the multiplied corroborations of Benedict's testimony crush the hypothesis that his testimony was "convenient" evidence.

I next pass to notice the argument of the defense, opened with such an air of triumph, that if there were deficiencies in the prisoner's report and return of monies for the 9th and 11th, it might be accounted for by the assumption that on the trip previous he had reported two or more through fares than he had retained money for. But the evidence as to the fares paid him and the number of through passengers eastward and westward taken in connection with the prisoner's tally-list, and then with his "conductor's report," are conclusive that the Company owed him nothing for previous overpayment. Singularly enough, this portion of the evidence seems to have been quite overlooked by counsel for the prisoner.

The argument that the prisoner was a bad accountant and liable to mistakes, is, when examined, fatal to a presumption

of innocence. The marks on this tally-list show that the prisoner kept it correctly, for it corresponds with the testimony of the witnesses on the train. Indeed, it will be remembered that the train was a light one each way, giving abundant time and opportunity to keep it correct. This tally-list shows not only that it was correctly kept (bear in mind, gentlemen, that it is the "conductor's report" with the accompanying and corresponding return of fares that was false), but that in the alterations, made during the calculation as to the amount he would dare to keep back, there was deliberation and coolness—you will examine these fatal ink-marks drawn over the pencil marks in which the tally was first made. The footings on the report are the same as the footings in the tally-list.

While arguing the presumptions of innocence counsel for the accused had instanced the fact in evidence that in making his report and return for the 9th and 11th, prisoner made a mistake of $4.00 against himself; here again was one of those fatal leaps in the dark—for do they not now see that a conductor who had first "counted out his bank" (deposit of $30 or $40 made with conductors for convenience in making change) and then paid over all the money remaining, could make no such mistake against himself? The fact of having made that mistake tells against the prisoner, because it proves that he had beforehand concluded about how much of the company's money to retain, and had made up his report to suit that predetermination, and not to fit the amount of money remaining after counting out his "bank" or the specific sum of the company's money constantly retained for convenience in making change. The evidence shows that Caldwell's "bank" was not quite a fixed institution, but subject to contractions and expansions; instead of being always exactly $40, it was sometimes much lower and again very considerably higher, it is more than probable, for instance, that at the time he was searched the two hundred and odd dollars found on his person was nothing more or less than the plethoric representation of that fluctuating institution—his "bank."

When Caldwell was at the office of Pinkerton & Co. he denied having received any orders or instructions to pay over the identical money received for fares, except so far as necessarily paid out in making change. Here, gentlemen (holding up a memoranda), is a memoranda in Caldwell's handwriting, made on the back of that very printed order, which, as has been proved, was handed to him by the Receiver. The reason of the order to pay over the identical money, with the exceptions stated, was this: it had been the custom —not very criminal, perhaps—of conductors to take the gold and the best of the bank bills received for fares and sell to brokers for the depreciated paper that forms the currency of Chicago and is received as such on deposit at the Banks, the conductor's realizing a handsome aggregate percentage on the operation. To check this practice the order in question was issued.

In two or three instances more fares are reported than are tallied; in two of these instances the fares thus reported amount to twenty cents! and in the other instance to but a few cents, whereas in the single item of four through fares not reported, although on the tally list, the money collected and kept amounts to twenty-four dollars! Making a total of all the fares collected on that trip, I find they amount to 61; of these 59 are reported. Remains there any doubt that this tally list is the tally list of the eastward and westward trips of the 9th and 11th of Sept.? Of the 61 fares 57 are identical in the conductor's report and in the tally. The pretense that the blank tally list used on the Chicago and Burlington line is not convenient to keep on, or that it is liable to cause mistakes is a childish allegation. I am sure a child of six years ought to understand it. I know that a conductor on the Galena Railroad was brought here to testify that tally lists were of no account and that the blank used on the C. & B. Railroad was one he could never understand. Gentlemen, the conductor who says he cannot understand this tally list is either a simpleton or a knave. If a simpleton, he

is unfit to be entrusted with the lives of passengers; if a knave, let his employers look to their receipts.

About the confessions made by this unfortunate young man I shall not speak at length—their simple statement is the most powerful presentment. Both Col. Hammond and Mr. Rucker told him at the outset that they wished him to make no admission whatever; that such proof of his delinquencies as were convincing were already developed. And yet these gentlemen are denounced by the prisoner's counsel forasmuch as they did not assist him to "counsel" on the night of the 15th, and, greater offense than that, because they were willing to "compromise a felony." At first there was no willingness, not to say desire, to pursue Caldwell with the criminal prosecution into which he has since forced them. They wished to save, not to ruin him; if he would make such restitution as he was able or, to use the magnanimous words of Col. Hammond himself, "such restitution as he himself thought was due the company," his resignation would be received and he (Caldwell) allowed to go elsewhere and win again the position of a good citizen by an honest life. All this was rejected in the blindness that ever obstructs the perceptions of the criminal, because he is a criminal. I pass over the confessions made at the office of Pinkerton & Co., and come to those made in the jail at the last interview with Mr. Rucker at the time—bear in mind—at the time when both Caldwell and Rucker supposed that the arrangements for restitution or settlement made by and with the consent of his counsel, were about consummated. Rucker spoke, as he honestly felt, sympathy with Caldwell and proposed to go with him out of the jail; asked him how he felt and Caldwell replied in substance "that he felt bad, very bad; that he was ruined; that the whole thing was out; that he ought not to have taken the money; that he wished he had never come to the city, and that he lived too fast."

Ah, gentlemen, the pivot on which all this sad drama turns is condensed into that single expression, I have lived too fast! Pregnant words; they should fall from this court room like

a tocsin on the giddy whirl of young men below; that multitude that has watched, with varied emotions, but all with intense interest, the progress of this trial, should carry it forth and spread it in the saloons and in all the popular resorts of youth. I have lived too fast! It is the most forcible as it is the most graphic expression of the unhealthy life that characterizes—I shall be allowed to say—a multitude of young men in this beautiful city. In no town in the world do the centers of allurement and temptation bear such a proportion to the population. Extravagance in dress, extravagance in living, dangerous extravagance everywhere is apparent to the observer, nor need that observer wear Puritanical glasses to see what I allude to. Perhaps it is the inseparable incident of the marvellous growth of this great city, and when things become more settled, and when the more conservative institutions of society become established, their superior moral force will cause all other elements and tendencies to revolve around the true central influences of society.

We have been reminded of the social position, and, of what comes still closer, the family relations of the prisoner. Gentlemen, no one of us is insensible to these appeals—they may be made never so often, may be made for unworthy persons, but the old words "love," "family," "children," are words alive; they have, like truth, an affinity with the soul of man, and never fall dead in the street. But we must sympathize with the husband only, not with the criminal. The crime committed, all the rest follow. Wife and children are the hostages, as it were, that a man leaves with society for his good conduct.

It is not for me to speak of this prisoner as more degraded than he really is; I have no purposes to subserve by denunciation. My aims in my unwelcome duty in this prosecution lie wide of such an object. We do not gainsay his previous reputation; the first man was tempted by Heaven's first, best gift to man. None of us are above evil incitements, none of us beyond the prayer "lead us not into temptation."

Gentlemen, the case is now with you; if you can conscien-

tiously acquit this prisoner, do so; if you are entirely convinced of his guilt, as charged, remember that Justice is the highest attribute of humanity.

The case was submitted to the jury, without any instructions from the COURT—both parties waiving instructions.

The jury retired in charge of an officer about 7 P. M. At 11 P. M. the jury not having yet agreed, the Court adjourned to Monday morning at 9 o'clock.

THE VERDICT.

November 26.

About half past nine the jury came into Court, and informed the COURT that they had not yet agreed upon a verdict, some of them stating that they thought they could not come to an agreement.

The COURT suggested that they had better retire again and consult together. That they had the Sabbath to consider and reflect upon the matter, and perhaps after an interchange of views and opinions, this morning, they might be able to agree. In conclusion he informed them that he did not consider this a case in which he considered himself authorized to discharge the jury.

About six o'clock P. M., the officer having charge of the jury reported to the COURT that they had agreed upon a verdict, whereupon they were brought into Court.

The jury, through their foreman, W. A. Tryon, handed to the Clerk their verdict, as follows:

"We, the jury, find the defendant GUILTY, in manner and form as charged in the indictment. We find the value of the property stolen, to be thirty-six dollars, and fix the term of imprisonment in the Penitentiary at one year."

Mr. Dickey on behalf of the prisoner demanded that the jury be polled; which being done, the jurymen severally declared that the verdict rendered is and was their verdict.

THE TRIAL OF MORDECAI M. NOAH FOR BREAKING OPEN AND PUBLISHING A LETTER. NEW YORK CITY, 1818.

THE NARRATIVE

Politics were likely to take on personal charges and recrimination in New York State in the first part of the nineteenth century and there were yellow newspapers then as now. Between two prominent journalists there was much hard feeling and when one of them got hold of a letter addressed to the other, he published it in his newspaper with very sarcastic comments. For this he was haled before the Court to answer a charge of opening a private letter. He denied the charge, saying that it had been sent to him by someone, he knew not whom. The judge told the jury that it was no offense to publish a private letter without the owner's consent, but if they thought that the editor had broken the seal and opened the letter either himself or by his command he would be guilty. The jury convicted him, but the Court set the verdict aside on the ground that the evidence was all in favor of the editor's story on this point.

THE TRIAL [1]

In the Court of General Sessions for the City of New York, February, 1818.

JACOB RADCLIFF,[2] *Mayor.*
JOHN B. COLES, } *Aldermen.*
REUBEN MUNSON, }

[1] *Bibliography* • "New York City Hall Recorder," see p. 61.
[2] See Mazzara's Case, ante p. 61.

The defendant Noah during the last term, was indicted for a misdemeanor at common law. The indictment consisted of five counts, the first three charge the intercepting, opening and reading a private letter, written by one Barnum of the partnership firm of Barnum & Nelson, Poughkeepsie, N. Y., and addressed to Alden Spooner of the City of New York; and in the other two counts as having been written by each of the said partners individually; which letter related to the private affairs and business of Barnum & Nelson and Alden Spooner; that the letter was written, sealed and transmitted by Barnum & Nelson, to Spooner, and that defendant on October 22, 1817, did intercept, open, and read the letter, to the scandal and disgrace of defendant, and to the great injury of Barnum & Nelson and Alden Spooner. The fourth count recited that Barnum & Nelson, corresponding by letter with Alden Spooner, on the 27th of October last wrote and addressed to him, a private letter which defendant, November 22, 1817, intending and contriving to harass and injure said Spooner, did obtain and get in his custody and possession, and did publish and expose the contents thereof to divers persons, to the number of fifty or more, to the jurors unknown. The fifth count alleged that defendant on November 4th, 1817, intending to harass, etc., did illegally, indecently, and injuriously obtain and get said private letter into his custody and possession, and did then and there, in a newspaper called the *National Advocate,* edited by him, the defendant, print and publish the matters contained in said letter, and did in the same paper print and publish comments and strictures on the letter and its contents thereof, which said letter and comments are set out in the indictment.[3]

[3] The following are the article and the contents of the letter, the letter being that part of the article which is printed in italics.

"SMALL FRY"

"It is a remarkable circumstance, that, prior to the late election for governor in this state, a number of presses were decidedly hostile to Mr. Clinton, and this hostility was marked by peculiar traits of opposition, such as would lead an observer to believe that nothing

but principle could rise to it. After his election, these presses, with an apparent simultaneous movement, came out in his favor. Had this sudden conversion been merely an acquiescence to the will of a majority of the Legislature, who were induced to nominate him, it would not have been surprising; but to change with an unexampled rapidity, from the extreme of opposition to the extreme of flattery and adulation, satisfied us that a suitable consideration had been promised them. We made this charge openly, as we abominate the spirit of corruption, which is now the order of the day in this state, but designated the devoted presses under the general denomination of small fry. We did this for the simple reason that every press, not purchased, would not assume to itself the title; accordingly, our experiment produced the desired effect; those who felt and winced at the charge, were loudest in their denunciations, and calls for proof that they were regulated by considerations of interest.

"Accident has given us something in the shape of proof, and we now avail ourselves of the opportunity to convince our readers, that with all the patriotism and devotion of the small fry to the public welfare, that they keep a watchful eye on the main chance, and a bright look out for a portion of the 'loaves and fishes,' as the promised reward for their consistency. The following letter, addressed by the editors of the *Poughkeepsie Observer* to Mr. Spooner, in this city, we found in our office, open, how it came there we are unable to say; but as it serves to illustrate our general positions, in relating to the presses in this state, and as Mr. Spooner is our friend and neighbor, though we do sometimes disagree on special points, he will not complain at the liberty we take in publishing it, recollecting that all is fair in politics, and, at the same time, the letter relates to public affairs, in which we take some interest.

"POUGHKEEPSIE, Oct. 27, 1817.

"Sir: Although entire strangers, we trust you will excuse these few introductory lines. A friendship was kept up between us and your predecessor, B. Irvine, Esq., although we never saw each other; and for whom we entertain a very high regard. We wish to transfer that friendship to you. We have, heretofore, acted as AGENTS FOR THE COLUMBIAN, at this place, and shall continue still to be of all the service to you we can. Feeling, with you, the same political principles, and acting for the same cause, our acquaintance, and, perhaps sometimes, a CONCERT IN ACTION, may be BENEFICIAL TO US BOTH!

"So far so good—this is only introductory—a kind of scraping of acquaintance between these disinterested gentlemen; who, being once agents for the *Columbian*, wish to hold the same appointment. It seems that a closer acquaintance with Mr. Spooner is desirable, and that if they lay their heads together, and act in concert, it may prove (mark, reader) not important to the credit or honour of the state, but 'BENEFICIAL TO THEM BOTH.' Here are two independent editors confederating to see how they can best serve themselves at the expense of the state. But fair and softly—let us hear their professions of political friendship.

"We take a lively interest in your warfare with Noah, and hope the time is not far distant when this wretch (thank ye, gentlemen; very much obliged for the compliment) *will meet with that general detestation which the pander of an unprincipled junta merits. You have a bitter knot of factious demagogues to contend with but we trust you will yet triumph over all opposition.*

"Here is a Machiavel for you among the small fry, who think that the best road to favor among the Clintonians is to abuse us roundly and soundly, and to express their abhorrence of the republicans in this city, who will not consent to allow such creatures power or influence. This is very well for an introduction and after this Spooner must not doubt their sincerity, as the sine qua non of all apostates is to vilify the *Advocate* and its editor, as if either could possibly be affected by such village cocks, who crow loudest when they most want feeding. But the best of the joke is that 'a shade of a shadow of a skeleton' of a party in this city known as Clintonians, terming the republicans, who beat them by a majority of upwards of 2,000 votes the last election a bitter knot of factitious demagogues. But let us continue to publish this letter as it was written:

"The Steam Boat Richmond, when opposite this place about daylight this morning, met with an accident in breaking some part of her machinery. She lies near here, and will be unable to proceed until she can repair, which cannot be, it is said, until some casting can be obtained from Salisbury, which has failed."

This, of course, has no connection with the object of the letter; but now comes the main point—now we arrive at the denouement, and "he that has ears to hear let him hear."

"We wish to have something done this winter by the republicans, TO DISTRIBUTE THE PRINTING OF THE STATE LAWS MORE GENERALLY AMONG THE PRINTERS OF HIS STATE; the PATRONAGE to the state printer is ENORMOUS. We suggested a plan to Mr. Irvine, which he said he approved of. We will write to you upon this subject in a few days. Respectfully, your assured friends.

(*Signed*) *BARNUM & NELSON.*

"A Spooner, Esq."

"We should like to have a peep at these truly disinterested gentlemen when reading their letter in our columns.—Blush they cannot; men who merely change ground to share the patronage of the state are past blushing. This, then, is to be the price of their coming out in favor of Mr. Clinton; and this confirms our position. The state printing is in the gift of the Legislature, and is valued at many thousands of dollars; and to silence these hungry cormorants; it is to be distributed to those most active in support of Mr. Clinton. This is supporting the purity and independence of the press, according to the new order of things, and thus emoluments of office belonging to the people are made an instrument of corruption, and subservient to the basest views—to purchase presses for the purpose of puffing men into notice by the most abject flattery and adulation.

Hugh Maxwell,[4] *Mr. Bogardus* and *Mr. Van Wyck* for the prosecution.

Mr. Fisk[5] and *Mr. Price* for the defendant.

WITNESSES FOR THE PROSECUTION

Charles P. Barnum. Am one of the firm of Barnum & Nelson, printers of the *Dutchess Observer,* in the village of Poughkeepsie; wrote the letter in question on October 29th and sealed and directed it to "Alden Spooner, Esq., editor the Columbian, 69 Pine street, New York." Delivered it to Eli Barnum, a passenger on board the packet *Driver,* Captain Taylor, from Poughkeepsie to New York, and directed to put it in the letter box of the packet. Mr. Nelson did not know the contents of the letter.

Mr. Price. What object had you in view in writing that part of the letter wherein it is stated, "We wish to have something done this winter by the republicans to distribute the printing of the State laws more generally among the printers of this State"?

Mr. Bogardus. This question has no bearing on the case. The gist of the offense is breaking and opening a private letter, the contents of which is not a matter in controversy.

The COURT overruled the question. The letter is in evidence, and the intention of the writer is to be judged by its contents.

Eli Barnum. On Friday, October 31st, I arrived in this city in the packet *Driver,* and, according to the directions received from Charles P. Barnum in Poughkeepsie, put the letter which was sealed, in the letter box of the sloop, and the next day in looking there found it was taken away.

But what will Mr. Buel say to this arrangement? he is state printer, and to keep so he has lately sent in his adhesion; notwithstanding which, such is the voracity of this small fry, that they spare neither friend nor foe. Now, how this is to be arranged between them we cannot say: Buel, while he has a charge of tobacco left in his pipe won't relinquish the state patronage; the *Caliban Herald* will, of course, quarrel with his neighbor, the *Observer,* for forestalling him. Spooner won't like any interlopers in distributing the 'loaves and fishes,' and, eventually Mr. Clinton will be glad to get rid of them all.

"Let the stricken deer go weep,
The hart ungalled play,
For some must watch, while some must sleep,
Thus runs the world away."

[4] See Mazzara's Case, ante p. 62.

[5] FISK, JONATHAN. Represented New York City in Congress 1809-1811 and 1813-1815 when he was appointed United States District Attorney for the Southern District of New York.

An envelope, admitted to be in the handwriting of the defendant, setting forth his intention of publishing the letter, bearing the date on the 3d day of November, 1817, in which envelope the letter was enclosed by the defendant to Alden Spooner, was produced and read in evidence to the jury.

Alden Spooner. I never had any correspondence by letter with Barnum & Nelson, previous to the reception of the letter in question, which was enclosed in an envelope directed to me by defendant on November 3d. The letter was open at the time it was received by me, and the next morning I found its contents published in the *National Advocate,* accompanied by strictures and comments. The envelope set forth the intention of the defendant to publish the letter in that manner; but I did not write or speak to him against the propriety of that publication. Afterwards I published the letter myself in the *Columbian,* conceiving it my duty to render the matter clear to my patrons.

WITNESSES FOR THE DEFENSE

George L. Birch. On Saturday morning, November 1st, between eight and nine, I found the letter opened on the floor of the front office of the *National Advocate,* in which office I am a clerk. No other person, at that time, was in the office. Saturday is the Jewish sabbath, and defendant, who is of that religion, does not attend to business on that day, and comes only occasionally into the front office, where he attends to his editorial business. Am positive that defendant had not been in the office that morning before the letter was found. Think he was not there during the remainder of the day.

Without examination, I took the letter and laid it on the desk; going out of the office again on business; on my return, finding the letter was directed to Spooner, laid it under a weight with other papers. On Monday morning, November 3d, about eight or nine, defendant sent for me to come into the back office, and inquired where I had obtained the letter, which defendant then had in his possession; and I gave the same account of finding it as I have just related. A boy from Spooner's office had been to the *Advocate* office for a paper, and it was then supposed that this boy had dropped it on the floor.

Cross-examined. Naphtali Philips was the proprietor of the *Advocate,* and of the same religion with defendant; Phillips was not at the office on Saturday. Defendant smiled when he inquired about the letter. I do not know that an inquiry was made concerning the finding of the letter of any other person except myself. The editor and proprietor of the *Advocate* were in the habit of receiving letters from Poughkeepsie in the packets.

Moses S. Philips. Am a son of the proprietor of *Advocate.* On the morning of November 3d, was in the front office, and finding a letter under the weight

directed to Spooner, curiosity induced me to open it and read it; I carried it to the defendant, then in the back office, who inquired where I had obtained it, which I told him. Defendant then requested me to ask Mr. Birch to come there, when he gave some account of finding the letter, as he has just related. I had neither heard nor seen anything of the letter until Monday morning. After reading the letter, defendant said, "This will blow up all their schemes."

Samuel Berrian. Was in the office and heard the letter read by defendant, who afterwards took a copy and enclosed the original to Spooner in an envelope.

Napthali Phillips. Did not see the letter until Monday morning, when I received it from defendant. Was not in the office on Saturday, but was there with defendant the following day. On reading the letter, I advised defendant to retain the original and not let it go out of his hands, inasmuch as the writer in one part of that letter called defendant "a wretch," which I conceived was libel; and, that defendant, by giving up the letter, would deprive himself of the proof requisite before a grand jury. Against this advice, defendant took a copy of the letter and then enclosed the original in an envelope to Spooner. Afterwards examined the strictures and comments written by defendant and published in the *Advocate* on the 4th of November, and fully approved of them before they were published.

Mr. Price called on counsel for the prosecution to produce the authorities on which it was intended to sustain the prosecution.

Mr. Van Wyck read from 2d Hawkins (p. 301, sect. 4th), "There can be no doubt but that all capital crimes whatsoever, and also all kinds of inferior crimes of a public nature, as misprisions, and all other contempts, all disturbances of the peace, all oppressions and all other misdemeanors whatsoever, of a public evil example, against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the king." The 17th section of the act of the United States concerning "post offices and post roads" (Graydon's Digest, page 341) enacts that "if any person shall take any letter or packet, not containing any article of value or evidence thereof, out of the post office, or shall open any letter or packet which shall have been in the post office or in the custody of a mail carrier, before it shall have been delivered to the person to whom it is directed, with design to obstruct the correspondence, to pry into another's business or

secrets, or shall secrete, embezzle, or destroy any such mail letter or packet, such offender, upon conviction, shall pay for every offense, a sum not exceeding $100."

Mr. Fisk. I rise with no inconsiderable degree of embarrassment, as counsel for defendant; not because I consider the least blame is imputable to my client, in a criminal point of view; but because throughout the criminal code there is no authority, no precedent for so extraordinary a prosecution. I have searched the authorities and looked, in vain, for a precedent which might justify this indictment; and, after most diligent inquiry, am bold to say, that the highest charge contained in this indictment is not a public offense. If it were so, why do the laws of the United States annex a penalty to the offense? for it surely cannot be denied but that this statute is remedial, and intended to prevent an offense unknown to the common law. On this occasion, defendant was unwilling, at the commencement of the trial, to move to quash the indictment; well knowing that the facts in the case would not warrant the charge in the indictment of breaking open a seal and reading a private letter. Not admitting that this is anything more than a private wrong, for which the party injured might sustain his civil action, we nevertheless repel the charge, and contend that the evidence does not support it, but expressly proves the contrary. All the evidence in the case fully supports our position that the letter came into the hands of defendant after it was opened by some other person.

The breaking the seal of a letter is an act which it is reasonable to suppose would occur frequently. Had it ever been considered an indictable offense, there might surely have been found some precedent, either in our records of criminal jurisprudence, or in those of England. To say the most of it, it is but a private wrong, or an infringement of inperfect right. Under the circumstances of this case it was a laudable act in defendant to publish this letter with strictures and comments. This letter contained: an atrocious libel against defendant; it called him "a wretch," and the writer, moreover, spoke of a

concert between his firm and Mr. Spooner, his correspondent, the avowed object of which was to have something done by the republicans at Albany this winter to distribute the state printing more generally. This, if not a plot, was a matter relating to the interests of the people in general, and ought to have been exposed. In a country of equal rights, no citizen should be subjected to a criminal prosecution for a matter uncertain and not well defined, for, as an elegant writer has remarked, "Miserable is the situation of the subject where the law is undefined or unknown."

Mr. Price (to the jury). The act of breaking open the seal of a private letter is not an indictable offense. Had it been, surely some precedent could be found for such an indictment, in the judicial records of that country from whence we have derived our criminal jurisprudence. The offense was against the private rights of individuals only, and not against those of the public. But in this case, the evidence clearly shows that the defendant is not guilty of the offense laid in the three first counts; the letter came into his possession opened; and under the circumstances it was just and laudable in him to give it publicity. Let any unprejudiced man on this jury lay his hand on his breast and say whether, if he had received a letter in the manner this was received, wherein he was called a wretch, he would not have published it with comments on the conduct and motives of the writer? Nay, more, whether, he would not, in the language of one of the witnesses, have retained the letter, and laid it before a grand jury? Besides, the avowed object in the letter was to effect something in concert with Mr. Spooner, touching the distribution of the state printing more generally. "We wish to have something done this winter by the republicans!" Now, as the object to be effected this winter is confined exclusively to those whom the writer was pleased to term the "republicans," I confess it gave me some considerable degree of alarm—it really looks ill. There used to be a party in this state termed "federalists," with whom I acted, and I therefore regretted to see, that by the terms of that letter, the federalists were not to be

consulted relative to the measure of "distributing the state printing." It was to be done by the "republicans" and for the republican printers only. I confess the jury is to lay aside all party prejudices; you were impannelled to pronounce the law as it stands, unbiased by party feelings; and it is not your province, however it might gratify the political opponents of defendant, to step in the place of legislators, and make that a law which was not so before.

Mr. Bogardus, Mr. Van Wyck and *Mr. Maxwell,* summed up the case for the prosecution. They contended that a private letter was a species of unprotected property: and that among men in every country, a seal had been considered sacred and inviolate. Every member of the community was concerned in the preservation of that peculiar property which was protected by public opinion alone. If no precedent could be found for an indictment for the specific offense laid in this, it is because no man had ever yet been so depraved as to be guilty of its perpetration. It cannot be denied but that the act is highly immoral and concerns the public interest, which constitute the distinguishing characteristics of a public offense. Though there is no direct evidence that defendant broke the seal and opened the letter, yet the circumstances of the case fully justify that conclusion. Defendant was the first person in whose possession the letter was found after it had been surreptitiously obtained; and counsel urged to the jury that he had not satisfactorily accounted for the possession. In the next place, he made an improper use of the letter, by publishing its contents. Had he, as is pretended, found the letter open, he ought, as an honest and honorable man, to have sent it, unread and unexamined, to Mr. Spooner.[6]

It was not just to argue that because no precedent for such an indictment could be found, that therefore this prosecution

[6] *Mr. Maxwell* admitted that no evidence existed in the case, showing that the defendant broke the seal; but he contended, that as this was a private letter, defendant had no right to publish its contents with strictures and comments. The other counsel for the prosecution opposed this admission, and insisted that there was evidence to warrant the conclusion that defendant broke the seal.

could not be maintained. It was sufficient to say that the act in itself was indecent and immoral, and concerned the interests of the public. In the case of him who in the public streets of London stripped himself naked, there might not have been, and most probably was not a precedent of an indictment for such an offense to be found, and yet a public prosecution was maintained: and in the case of William J. Jenner, tried in this court,[7] no precedent existed of an indictment for so singular an offense; and yet his counsel, by not raising the question, tacitly admitted that the indictment was supportable on general principles.

RADCLIFF, *Mayor* (to the jury): This is a new case, and the first question presented for consideration is, whether it is a misdemeanor in any individual to break the seal of a private letter, and publish its contents. It is not the case of a letter intercepted by the authority of government, or a public officer, which under certain circumstances might be justified, and necessary to detect designs against the public safety or peace. The case before us is that of an individual who is charged with committing the act without such authority. It is admitted that there is no precedent for such an indictment, but counsel for the prosecution contend, that on general principles, the charge against the defendant must amount to an offense. In the absence of precedent or direct authority we can only resort to general principles, though it would be more satisfactory to have former decisions for our guide. To constitute a misdemeanor punishable by indictment, two things appear to be essential: first, that the act be in itself improper or immoral; and, secondly, that it be of public interest or concern, and have a tendency to produce general or public evil. It is not the immorality of an act alone, which constitutes a public offense. Many gross frauds and injuries are committed by individuals towards each other, for which there are no other than private remedies. But when the act complained of be also of a public nature, and the community have a general interest in suppressing or preventing its repe-

[7] 2 N. Y. City Hall Rec., 149.

tition, it then becomes a public offense, punishable by indictment. Upon these principles, and the best consideration we have been able to give this subject, the court is of the opinion that the breaking open and publishing a private letter is a misdemeanor, and therefore indictable. Correspondence by letter has become very extensive and important. Next to that of personal intercourse, it is a medium of communication the most general and interesting of any that exists in a civilized community. It may relate to matters of friendship, of business, and to all the concerns of human life, whether of a public or private matter. A letter is usually protected by a seal, to guard it against public inspection, and by the common consent of the world, this seal is held to be sacred. It is the interest of every man in the community, that it should be so, and to permit it to be violated, would lead to incalculable evils, and strike at the root of all public and private confidence. If, therefore, the proof in this case can support the charge that defendant broke open this letter, or, which would amount to the same thing, if he had any agency, directly or indirectly, in doing it, in the opinion of the Court, he ought to be found guilty. The direct evidence of the witnesses on the subject is, that it was found open on the floor of his office; but it is contended by some of the counsel for the prosecution, that there are circumstances which go to show that he must have had an agency in procuring and breaking open the letter. If there be circumstances to satisfy you of this, according to the opinion we have expressed, the indictment would be sustained; otherwise, defendant ought to be acquitted. Another question is also made; Considering the evidence not to warrant this conclusion against defendant, and the letter to have been found open on the floor of his office, and that it came to his hands in that situation, as stated by the two witnesses, Birch and M. S. Phillips, is the act of reading and publishing it an indictable offense? As far as my own opinion is concerned, I have no hesitation in saying that I consider it incorrect, as between individuals, to read or make any use of a private letter addressed to another, to whom it

is known to belong, whether it be found open or not. The proper course for defendant, I think, would have been to have sent this letter to Spooner, and to have published nothing on the subject. On this point, however, I am sensible a difference of opinion exists among the members of this Court, but it does not affect the legal question, with respect to which there is no difference. It is not every incorrect or improper act which is indictable. To render it so it is necessary, as before stated, that it should be of a public nature, and of a general evil tendency, or the community have not such an interest in it as to make it the ground of a public prosecution. The finding a letter open is not a common occurrence, and can rarely happen. Generally, it must have reached the owner, and have been lost or mislaid through his negligence or carelessness. The public have, therefore, no general interest on this question, and the law does not provide against the carelessness or negligence of individuals. Whether, therefore, it be or be not incorrect or immoral to read and make use of a letter found open, by publication or otherwise, contrary to the intent of the writer or his correspondent, it is in our opinion, not a matter of public concern, and therefore not indictable.

It has also been made a question, whether the strictures and comments of the defendant which accompanied the publication of the letter, or the use made of it in connection with those comments, does not amount to an offense. The strictures and comments do not, in our opinion, alter the case, or affect the question on the present indictment. If they are indictable at all, it can only be by the way of prosecution for a libel.

Having expressed our opinion as to the law on the questions that have been made, it is admitted, as has been contended by counsel for defendant, that you have a right in this, as in all criminal cases to judge of the law as well as the fact. But in deciding on the law, it must rest with you to consider how far it is prudent or discreet to respect the opinions delivered by the Court.

The jury retired and returned with a verdict of GUILTY.

Mr. Price demanded that the jury should be polled which was done and they confirmed the verdict.

On February 6th the verdict of guilty was set aside by the COURT and a new trial ordered on the ground that the verdict was against the weight of the evidence. The Jury, said the COURT, had really decided, contrary to the opinion of the COURT expressed to them that the reading or publishing a letter, whether found open or not, was an offense.

THE TRIAL OF ALDEN SPOONER FOR LIBEL, NEW YORK CITY, 1818.

THE NARRATIVE

The second act of this drama of Noah and Spooner finds the latter indicted for printing in his newspaper the charge that Noah had made use of a letter (the one in the previous case) knowing it to be stolen. Here the jury which curiously enough was composed of some of the same men that sat in the Trial of Noah and convicted him, could not agree, were discharged by the Court and the prosecution went for nothing.

THE TRIAL[1]

Before the same Judge and in the same Court as in Noah's case.[2]

Defendant was indicted for a libel, published in a newspaper called the *New York Columbian*, of the 2nd day of November last, against Mordecai M. Noah, the editor of a newspaper called the *National Advocate*.

Mr. Maxwell, Mr. Fisk and *Mr. Price* for the People.

Mr. Bogardus and *Mr. Van Wyck* for the defendant.

When the jurors were called, it appeared, that some of them had served on the trial in the preceding case. The COURT inquired of counsel for the prosecution, if they had any objection to make to such jurors. They answered in the negative.

The libel set forth in the indictment, was part of a long editorial article, headed, "Madness of party," animadverting

[1] *Bibliography.* * "New York City Hall Recorder," see p. 61.
[2] Ante p. 671.

on the conduct of the general committee of the republican party in this city, in sending a delegate to Philadelphia, to join in a public dinner, and congratulate a particular party in that city, on their recent triumph in an election.

The matters alleged as being libellous, set forth in the indictment, were in the following words:

"Yes, republicans of New York, the *National Advocate* of yesterday, exhibits the fact, that a general committee, of which Mr. Jonathan Thompson was chairman, and Mr. Benjamin Romaine secretary, thought it necessary to send a representative to Philadelphia, to join in this carousal, and by addressing and toasting, to propitiate the favor of the triumphant party. And who is the representative of this faction, who seek to foment the feuds of civil war among their brethren, of a sister state? Who is the grand depository of all the political virtue of this great metropolis? Gentle reader, Major, Manassah, Moses, Noah, was this high dignitary—the political consequence of this great state, rested on the shoulders of this modern Atlas—a stranger, with no ties of family or property—the knight of the broken seal—who converted to his own use, property known to be stolen!!"

The publication having been admitted, it was read in evidence to the jury, and the prosecution rested.

Mr. Van Wyck (to the jury): As the gravamen in the indictment, consists in calling the prosecutor, "the knight of the broken seal," who converted to his own use, property known to have been stolen, defendant would prove, that this part of the publication referred to the stealing of a certain letter, sealed, and transmitted by "Barnum and Nelson," printers at Poughkeepsie, to the defendant in this city: and that such letter, in its passage, was intercepted and opened, before it reached him, and was published by the prosecutor, under circumstances in which he must have known that it was surreptitiously obtained. Defendant would contend before the jury, that inasmuch as a letter is not the subject of a felony, that therefore, no libel is contained in this publication.

Mr. Van Wyck offered to read a passage from the *National Advocate* of the 4th of November, to show that the prosecutor himself considered the libelous matter in the conclusion of the publication, to refer to the transaction concerning this letter.

Mr. Price. The particular part of the publication, attempted to be explained, was insulated, and had acquired a publicity through the state, among persons who were not acquainted with the particular circumstances of the transaction concerning the letter, and who, most probably, were not in the habit of reading the *Advocate.* Counsel for the defendant, had, therefore, no right to give in evidence, any construction made by third persons, which the libel, on its face, would not warrant.

The testimony was withdrawn.

Charles P. Barnum testified to the same facts in relation to the letter, as are stated in his testimony, in the preceding case.

The letter of Barnum and Nelson, set forth in the fifth count of the indictment in the same case, was here read in evidence.

Counsel for the prosecution offered to read passages from the *National Advocate* of Nov. 4th, 12th, 15th, 18th, and of Dec. 2nd and 3d; with the same view, and for the same purpose as that of the 4th of Nov. above stated, was offered.

Counsel for defendant objected.

THE COURT: The evidence was admissible for the purpose of showing what was understood to be the species of property alleged in the publication as known to have been stolen, in connection with, or in confirmation of what appeared from the publication itself. At any rate, defendant had a right to produce such testimony, in mitigation of his punishment, should he be convicted.

Passages from these several papers were read, from which it appeared therefrom, that the prosecutor considered the libellous matter, contained in the conclusion of the publication, as having reference to the transaction concerning the letter.

Counsel for the prosecution offered to read the conviction of the prosecutor, for the purpose of showing by the verdict of the jury, that the letter was stolen.

Counsel for defendant said that the evidence offered, was

so manifestly absurd, that they would not argue the question before the court.

THE COURT: The evidence is inadmissible and unnecessary, inasmuch as the facts relative to the transaction are already before this jury, or might be proved, so as to enable them to judge of the matter for themselves.

EVIDENCE IN REBUTTAL

Mordecai M. Noah. I have never made use of property known to be stolen nor have I ever made use of a letter known to be stolen. On Monday morning, 3d November, Moses S. Phillips, brought the letter to me opened, saying, "Here is a curious letter"; that "he had found it on the desk, under a weight, in the front office"; that he then looked on the back of the letter, and unfolded and read it, without examining its direction. I sent for Mr. Birch, inquired of him where he obtained the letter, and he said that he had found it, on Saturday morning, on the floor of the front office, open.

I had never heard of or seen the letter, until Monday morning; and besides inquiring of M. S. Phillips and Mr. Birch, had made further inquiries, to ascertain how the letter came on the office floor, opened; but could obtain no satisfaction. Soon after the letter came into my hands, I showed it to N. Phillips, the proprietor of the paper, who advised me to retain the original, as it contained a libel; notwithstanding this, I took a copy, and enclosed the original in an envelope, to Mr. Spooner, stating therein, how it was found, and also my intention of publishing it in the *Advocate*. Do not recollect whether Samuel Berrian was in the office and heard the letter read; but if he were, he approved its publication, as did also the proprietor of the *Advocate*.

Under then existing circumstances, I considered it perfectly justifiable to publish the letter, and would publish it again. There was a public meeting, and a dinner given by certain political men in Philadelphia, and I went there as a private citizen, and not as a representative from the general committee in this city. After my arrival there, I received a congratulatory letter from the general committee here, to be presented to the meeting. I have lived in this city nearly my whole life, and was educated here. Have been consul of the United States at Tunis.

John O. Sullivan. Was consul of the United States at Mogadore: first became acquainted with the prosecutor at Gibraltar, when he was on his way to Tunis as consul of the United States; his character was fair and unblemished, and his manners and demeanor those of a gentleman.

Have read the publication in question, and had I seen it published against any other individual, whom I had not known, I should have thought the person alluded to had been guilty

of an offense equal to stealing. The publication, in my opinion, is calculated to hold the prosecutor up to public ridicule and contempt.

Jonathan Thompson. Mr. Noah was not sent to Philadelphia, as the representative of the general committee, of which I was chairman. The character of the prosecutor is perfectly fair and unblemished.

Mr. Van Wyck. Do you know the verdict of yesterday, and did you hear the evidence on that trial? If so, what do you now think of his character? I heard the evidence of yesterday, and a part this day; and I retain the same opinion of his character as I have before stated.

Mr. Van Wyck. Suppose you were to find a letter directed to an individual, broken open, lying on your office floor; would you consider it a justifiable act to open, read, and publish its contents? That would depend on circumstances: I think, standing in the situation of the prosecutor, had such a letter been found by another, open, and brought to me, wherein I had been called "A wretch," I should have pursued the same course as he did, if not a more rigorous one, towards the writer.

The MAYOR (to the jury): Notwithstanding, in the discussion of this case, much has been heard, much of party views and purposes, the Court hopes that such considerations will be discarded from your deliberations. Cases of this description generally originate among printers; and it is a subject of regret, that the press has become so licentious. Notwithstanding this, the same rules of law and of evidence, are to be applied in determining cases in which editors and printers were concerned, as in any other. The Court deems it unnecessary to enter so extensively into the definition of libels as to comprehend every case of that description. It is sufficient for the purpose of this case to say, that any malicious writing or publication, exposing or holding up another to public hatred, contempt, or ridicule, was libellous.

The doctrine on the subject of the defense or justification of what would otherwise be deemed a libel, has been very much agitated in the Courts of this state, until by an act of the legislature, and the decisions which have taken place, I consider it settled that malice is the criterion of a libel on a public prosecution. It is provided, however, that the defendant may give the truth in evidence, but it is not of itself a justification, unless the publication also proceed from good

motives, and be intended for justifiable ends. A publication may, in some cases, be true and yet a wanton and cruel libel. If, for example, natural defects, personal deformity, or the misfortunes of individuals were to be made the subjects of newspaper animadversion, however true, it could not be justified, for the motive must necessarily be improper. So on the other hand it follows that a publication may be untrue, and yet, on a public or criminal prosecution, be held innocent. If it be founded in error or mistake, and no malice appears, it would be excused from being punishable as a crime. To constitute a crime the intention of the party accused is the material consideration, for there can be no crime without a criminal intent. It will be observed that we now speak of libels for which criminal prosecutions may be maintained only; not of remedies by civil actions for such libels, in which I apprehend a different rule to prevail.

Upon these principles, the inquiry in the present case will be, whether the publication in question be injurious to the character of the prosecutor, Noah, by holding him up to public hatred, contempt, or ridicule, and whether it proceeded from malicious motives.

The matters charged to be libellous may be naturally classed under two heads. 1st. As they relate to the expedition to Philadelphia. 2d. In reference to the charge of converting to his own use property known to be stolen, as stated in the conclusion of the publication.

In relation to the first, it appears that the prosecutor originally went to Philadelphia in his private capacity, not as the representative or delegate from the general committee of this city, that when there he received a congratulatory letter from the committee to be presented to the meeting in Philadelphia, on the occasion of their triumph in the preceding election. He then, and not before, became so far the agent or representative of the general committee here. But this agency appears to us of little importance in respect to the charge of a libel.

What is more material in this view, is that he is repre-

sented in this branch of the publication as being the grand depository of all the political virtue of this great metropolis, as a high dignitary, a modern Atlas, on whose shoulders rested the political consequences of this state, and a stranger without the ties of family or property. These representations appear to us to be intended to hold him up to ridicule and contempt, and if you are of that opinion, the defendant ought to be found guilty.

As to the next branch of the publication, the prosecutor is there represented as the "knight of the broken seal, who converted to his own use property known to be stolen." If this charge of converting to his own use property known to be stolen, is to be taken in its broad sense, unexplained and unconnected with any transaction to which it referred, it would be an atrocious libel. But it is contended that it manifestly referred to the case of the letter, which has been so much a matter of discussion, and that it must have been so understood. The transaction concerning this letter had already been the subject of great controversy; and it does appear to us that the circumstances attending this publication, and the introductory remark, calling the prosecutor the knight of the broken seal, indicated strongly, that the charge related to the letter. It was so treated by the prosecutor himself, in his subsequent publications concerning it, and I think it would naturally make that impression on the mind of anyone.

Technically speaking, or in a legal sense, a letter cannot be the subject of a felony, but this consideration alone would not furnish an excuse to the defendant. A letter is still a species of property, the purloining of which is considered unlawful; and, for anyone to be subjected to the imputation of converting to his own use, a letter known by him to have been thus obtained, would be highly injurious, and therefore libellous.

Supposing that the publication had reference to the letter, and was so understood, the next inquiry is whether the letter is to be considered as having been in fact purloined, and that known to the prosecutor.

Considering the manner in which the letter was found on the floor of the office, and its coming into the possession of Noah, as stated in the testimony, if conjecture were to be indulged, it is probable that someone took this letter from the vessel in which it came, opened, and ascertained its contents; and, for the purpose of making mischief, threw it or dropped it in the office of the prosecutor.

But were the circumstances such as to indicate to Mr. Noah that it must have been purloined? If they were, he must of course have known them.

It was found open on Saturday morning, recently after its date, on the floor of his office, it remained in the office until Monday morning, when it was handed to him, it was addressed to another, to whom it belonged, it contained, among other things, a libel upon himself, and related to the distribution of the business of the state printing, from which it seems he was to be excluded. It is not probable that the writer, or his correspondent, would have put this letter in the way of Mr. Noah: yet there is mystery concerning it, and all that can be said is, that if you think the circumstances were such as ought to have satisfied him, that the letter had been purloined on its passage to the rightful owner, then this part of the publication would be justified, as far as relates to the truth of the facts alleged in it. There is no doubt he converted it to his use, by publishing it. Whether it was purloined, and he ought to be considered as knowing it, are among the matters of fact in the case, which belong to you to decide.

Admitting the letter was purloined and that the prosecutor ought so to have regarded it, still, according to the principles we have mentioned, another question remains; did the publication, containing this charge, proceed from good motives, and was it intended for justifiable ends? For although true in point of fact, the motives and the ends are to be considered. The defendant was entitled to vindicate his own rights, and expose the injury, if any was done him, in relation to this letter, but if he went beyond this and was actuated by malice, or had in view any unjustifiable purpose, he would still be liable

to this prosecution. In a case depending so much on circumstances, and the intention of the parties concerned, we do not consider it the duty or the province of the Court to express a decided opinion farther than has been done, and we leave the question for your determination.

THE JURY DISAGREE

The jury retired at 6 P. M.; at 8 o'clock the next morning they came into court, and stated that they had not agreed on a verdict, and that it was not probable they could ever agree. The COURT considered it useless to send them out again, and discharged them.

THE TRIAL OF MORDECAI M. NOAH AND ALDEN SPOONER FOR CONTEMPT OF COURT, NEW YORK CITY, 1818.

THE NARRATIVE

The third act in this interesting drama finds both editors before the judge for contempt. Noah's paper after the verdict against him had assailed the jurors in good style, charging that it had been obtained through political influence. Spooner's paper had made similar charges on the result in his case. Brought before the Court they made abject apologies and were discharged with a reprimand.

THE TRIAL[1]

In the Court of General Sessions, City of New York, February, 1818.

JACOB RADCLIFF,[2] *Mayor.*

After the verdict of guilty was rendered against Noah and while the motion for a new trial was pending, a juror delivered to the Court several copies of the *National Advocate,* edited by Noah, containing reflections on the conduct of the jury, in rendering the verdict they had given, and claimed the protection of the Court. The COURT delivered the newspapers to the District Attorney, saying that the Court could not regularly notice the publications contained in them, unless the papers were verified by affidavit, showing by whom they were printed or edited.

Mr. Maxwell, District Attorney, produced an affidavit of H. Spence, stating, that M. M. Noah was the editor and N.

[1] *Bibliography.* * "New York City Hall Recorder," see p. 61.
[2] See Mazarra's Case, ante p. 61.

Phillips the proprietor, of the *National Advocate;* to which affidavit were annexed the newspapers mentioned, dated 14th, 15th, 16th and 17th, January.

Several passages from these papers were read.—The first contained a long editorial article, headed "Liberty of the Press," in substance, attributing the result of the prosecution against Noah to the influence of party, complaining with considerable severity of the grand jury, for finding the bill, and of the petit jury, for finding the verdict they did, alleging it to be against evidence. The article concluded with the publication of Barnum and Nelson's letter at full length. The paper of the next date contained a communication, signed "Blackstone," wherein the writer endeavored to show that the indictment was without precedent, and the verdict contrary to law and evidence. The paper further contained several editorial articles on the injustice of the verdict; in one of which it was stated, "We were pained to see an attempt made, for party purposes, against law and evidence to convict a citizen for a misdemeanor," etc. The third paper contained another editorial article attributing the verdict to the efforts of a "pensioned band," and accusing that band of an attempt "to sully the purity of justice." The fourth paper contained several articles in relation to the trial, attributing the proceedings and verdict to the influence of De Witt Clinton, and asserting that he had an agency in procuring the conviction against law and evidence. The writer complains of "bending justice to meet a specific purpose"; and in another article it was stated, that the Clintonians obtained a verdict "which does them no honor, and the jurisprudence of the city no credit."

THE COURT, on reading the affidavit, and passages from these several papers, directed them to be filed with the clerk, and on motion of the District Attorney, ordered rules to be entered, that M. M. Noah and N. Phillips, show cause why attachments should not issue against them, for these contempts.

Mr. Maxwell read a similar affidavit, attached to the *New*

York Columbian of January 16th, which contained the following article: "After Mr. Jonathan Thompson (chairman of the general committee) had given his evidence in the case of the People against Spooner, a gentleman said, 'If this is the high priest of the congregation, what must be the deacons and elders! What must the worshippers be, when such is their idol!'"

Mr. Maxwell moved the like rule against Alden Spooner, the printer and editor of that paper, which was ordered.

Mr. Maxwell moved that the parties against whom the rules, as above mentioned, had been entered at the last term, show cause why attachments should not issue against them.

The parties appeared, in person and by their counsel.

Mr. Price, for Noah, objected to the proceedings, for irregularity, in this, that copies of the passages complained of as matters of contempt had not been served on the party at the time the copy of the rule to show cause was served. This was necessary, for the purpose of apprizing the party of the matters he was called upon to answer.

Mr. Maxwell contended that the papers containing the matters of contempt were pointed out; and that the party was sufficiently apprized of the particulars, by the several papers filed, when the rule was entered.

The MAYOR considered the objection hypercritical, and that it was sufficient for the District Attorney to proceed and point out the several matters of contempt, in the newspapers accompanying the affidavits; and if the party then wished a further time for answering, the Court would grant it.

Mr. Maxwell presented interrogatories, to be filed with the clerk, to be administered to the parties. He considered this to be the practice.

The MAYOR did not consider that authority to apply to this stage of the procedings. The parties are brought into court, to show cause why the rules granted at the last term should not be made absolute; and it now rests with them to show this cause. If they do not, the rules become absolute of course, and the attachments will issue; on the return of which, the

interrogatories are to be filed with the clerk, to which they must answer under oath. They may, however, waive or supersede this proceeding, by consenting to answer, or purging the contempts at this time.

Mr. Maxwell marked with a pen the several passages alleged to be contemptuous in the papers filed.

Mr. Price questioned the jurisdiction of the Court, in proceeding to punish for a contempt not committed in the face of the Court. It was a rule in England, that no court of inferior jurisdiction, could proceed by attachment, to punish a party for an alleged contempt, not committed in the face of the Court.

The MAYOR. This objection, if well founded, is inconsistent with everything that had been done, and ought not now to be made. This Court possesses all the powers of a Court of Oyer and Terminer, over cases within its jurisdiction; and, if it cannot punish for contempts like these, it had better be abolished. The Court is not disposed to hear counsel on that objection singly; and wishes to know of counsel, whether his clients were prepared to show cause on the merits of the charges against them. If so, the Court requests all the points relied on to be stated at once. If they were not prepared, the Court will give a longer time.

Mr. Price for Noah, and *Mr. Van Wyck* and *Mr. Drake* for Spooner filed an affidavit for each of the parties, stating, in substance, that in neither of the papers on which the rule was granted, did they mean or intend, either directly or indirectly, any contempt of this Court.

The MAYOR. The impropriety of publishing any matter, in a public newspaper, reflecting on the conduct of jurors or of witnesses, or of the Court, in any judicial proceding, while it was pending, and undetermined, must be manifest to all. The matters of contempt on which the rules against Noah, Phillips, and Spooner were granted at the last term, related to two cases which were pending, and undetermined at the time the publication appeared. In the one, a verdict had been rendered against the defendant, and his counsel had moved

for a new trial. The court had not decided on that motion. In the other, the jurors, after hearing the evidence, could not agree, and were discharged, and the case was still pending.

The Court is of opinion that it can never be tolerated, that any party in a judicial proceeding, or any other person, should be permitted to publish any matter, relative to such proceeding, reflecting on the motives or conduct of jurors, witnesses, or of the Court, while the case is pending. It is obvious, that such publications are calculated, not only to impeach the administration of justice, but to bias the public mind, to excite prejudices, and to influence the future decision of the case; and must therefore be considered as high contempts. In respect to witnesses and jurors, it ought also to be recollected, that they do not come voluntarily into a court of justice, but are compelled by the process of law. They are, therefore, entitled to the protection of the law, against attacks and abuse of this kind; and if they cannot be so protected, the most dangerous consequences to the whole system of our jurisprudence would ensue. Should another case of this kind occur, we should be disposed to punish with severity, if not to the extent of our power. Under the circumstances of the present cases, believing that no contempts were intended, we shall receive the apology offered, and order the rule to be discharged.

Defendants discharged.

THE TRIAL OF CLEMENT L. VALLANDIGHAM FOR SEDITION AND REBELLION, CINCINNATI, OHIO, 1863.

THE NARRATIVE

In the second year of the war of the Rebellion, the administration of President Lincoln was hotly attacked by the Democratic opposition in Congress and in the country. The suspension by the President of the writ of *habeas corpus* which made him practically a dictator was bitterly opposed. And while at the opening of the war there were more volunteers than could be used, the enthusiasm soon subsided, volunteering almost ceased, and in March 1863, Congress authorized the President to make drafts for the National forces at his discretion. This course was declared by the Democrats to be unconstitutional; was so held by the Supreme Courts of New York and Pennsylvania, but was upheld by the Federal Courts. Riots broke out in New York and other large cities which were suppressed only after bloodshed.

Clement L. Vallandigham, a member of Congress from Ohio until 1862, was the leader of the radical element of the Democrats in the West, often called "Butternuts" or "Copperheads," and he lost no occasion to denounce the administration. Referring to arbitrary arrests, he declared that Lincoln, Stanton and Hallack should be arrested. Ohio was to elect a governor in 1863, and Vallandigham was an aspirant for the Democratic nomination. He went over the state making speeches bitterly denouncing the conduct of the war. He was a strong and able leader, a successful orator, a dashing politician of the Douglas type, but, without the deep sincerity that characterized Douglas. The last and most violent of his speeches in this canvass was made at a great Democratic meeting at Mt. Vernon.

General A. E. Burnside, after his disaster at Fredericksburg was assigned to the Department of the Ohio, with headquarters at Cincinnati. Soon after he was installed in the new position he issued a war order stating that declaring sympathy for the enemy would not be allowed. Burnside soon had his eye on Vallandigham, and sent agents in citizen's clothes to hear his speeches. These agents declared the speech at Mt. Vernon incendiary, and Burnside determined to arrest Vallandigham. On May 5, at 2 o'clock in the morning, a band of soldiers beat upon the door of the Vallandigham home in Dayton, and, being refused admittance, they burst in the door, seized Vallandigham in his bed chamber, and carried him to Cincinnati.

In a few days the distinguished prisoner was tried by a military court, before which he refused to plead and whose jurisdiction he denied. But the trial went on, and Vallandigham was found guilty of declaring disloyal sentiments and was sentenced to close confinement during the remainder of the war. General Burnside approved the decision, but Mr. Lincoln commuted the sentence to banishment to the Southern Confederacy, the sentence of the court to be carried out only in case of his return. The banishment was duly executed by General Rosecrans.

There was a vigorous Democratic protest from all sides against this summary dealing with Vallandigham. A great meeting at Albany, New York, strongly condemned the proceedings, and sent a set of resolutions to the President requesting, almost demanding, a reversal in the case of the Ohio statesman. Mr. Lincoln answered in a long argument for the necessity and the constitutional warrant for the system of arbitrary arrests. He touched a popular chord when, in speaking of the universal rule of inflicting the death penalty for army desertions, he said, "Must I shoot a simple minded soldier boy who deserts, while I must not touch a hair of the wily agitator who induces him to desert?"

Vallandigham did not remain long in the South. He escaped in a blockade runner and repaired to Canada. While

there he was nominated by the Democrats for governor of Ohio, and the convention that made the nomination appointed a committee of eminent citizens to address the President in favor of a revocation of the order of banishment. Lincoln offered to revoke the order if they, the members of the committee, would sign a paper promising to do all in their power to aid and encourage the army and navy in suppressing the rebellion. The committee replied that they would not enter into any bargains or contracts with the President for the return of Vallandigham; that they asked it as a right and not as a favor.

The Ohio canvass went on, and the Democrats declared that if their candidate were elected they would meet him at the state line and conduct him to the capital in such numbers as to protect him from attack. But the news from Gettysburg, from Vicksburg, and from Port Hudson was so favorable to the Union cause that the war party took new courage and swept the state, electing their candidate John Brough, over Vallandigham by a majority exceeding a hundred thousand.[1]

THE TRIAL[2]

Before a Military Commission, held at Cincinnati, Ohio, May, 1863.

BRIG.-GEN. R. B. POTTER,[3] *President,*
LIEUT.-COL. E. R. GOODRICH,[4]
COL. JOHN F. DE COURCY,[5]
MAJOR J. L. VAN BUREN,[6]

[1] Elson, History of the United States.
[2] *Bibliography.* • "The trial of Hon. Clement L. Vallandigham by a military commission and the proceedings under his application for a writ of Habeas Corpus in the Circuit Court of the United States for the Southern District of Ohio. Published by Rickey & Carroll, Cincinnati. 1863."
[3] U. S. Vols.
[4] U. S. Vols.
[5] 15th Ohio Vol. Inf.
[6] A. D. C.

MAJOR J. M. BROWN,[7]
MAJOR A. H. FITCH,[8]
CAPTAIN P. M. LYDIG.[9]

On April 13, 1863, Major General Burnside[10] issued an order (General Order No. 38) which was promulgated at Cincinnati, Ohio, the Headquarters of the Department of the Ohio, that "hereafter all persons found within our lines who commit acts for the benefit of the enemies of our country will be tried as spies or traitors, and, if convicted, will suffer death. This order includes the following class of persons:

Carriers of secret mails.

Writers of letters sent by secret mails.

Secret recruiting officers within the lines.

Persons who have entered into an agreement to pass our lines for the purpose of joining the enemy.

Persons found concealed within our lines belonging to the service of the enemy, and, in fact, all persons found improperly within our lines, who could give private information to the enemy.

All persons within our lines who harbor, protect, conceal, feed, clothe, or in any way aid the enemies of our country.

The habit of declaring sympathies for the enemy will not be allowed in this Department. Persons committing such offenses will be at once arrested, with a view to being tried as above stated, or sent beyond our lines into the lines of their friends.

[7] 10th Kentucky Cavalry.
[8] 115th Ohio Vols.
[9] A. D. C.
[10] BURNSIDE, Ambrose Everett (1824-1881). Born in Indiana. Graduated from West Point. After serving in Mexican war retired from army and became a manufacturer of a breach loading rifle of his own invention. At outbreak of Civil War he organized a regiment of Rhode Island volunteers and was commissioned Brigadier General. Made Major General in February 1862 and in November succeeded McClellan as Commander of the Army of the Potomac. Losing the battle of Fredericksburg, he was relieved of his command and transferred to the Department of the Ohio. Served again (1864) in the Army of the Potomac under Grant. Governor of Rhode Island 1866-1868; United States Senator 1874-1881.

It must be distinctly understood that treason, expressed or implied, will not be tolerated in this Department.

All officers and soldiers are strictly charged with the execution of this order."

On May 4, 1863, an order was issued from the Headquarters of the Department of the Ohio, by command of General Burnside for the arrest of Hon. Clement L. Vallandigham [11] and that he be taken before a Military Commission at Cincinnati to be tried for violation of General Order No. 38. The Commission met on May 6th seven of its members being present.[12]

Captain F. J. Cutts [13] appeared as Judge Advocate.

Clement L. Vallandigham, appeared in person.

The PRESIDENT asked the prisoner if he had any objection to any of the members, to which he replied in the negative.

The *Judge Advocate* presented the following charge:

Publicly expressing, in violation of General Orders No. 38, from Head-quarters Department of the Ohio, sympathy for those in arms against the Government of the United States, and declaring disloyal sentiments and opinions, with the object and purpose of weakening the power of the Government in its efforts to suppress an unlawful rebellion.

In this, that the said Clement L. Vallandigham, a citizen of the State of Ohio, on or about the first day of May, 1863, at Mount Vernon, Knox County, Ohio, did publicly address a large meeting of citizens, and did utter sentiments in words, or in effect, as follows, declaring the present war "a wicked, cruel and unnecessary war;" "a war not being waged for the preservation of the Union;" "a war for the purpose of crushing out liberty and erecting a despotism;" "a war for the freedom of the blacks and the enslavement of the whites;" stating "that if the Administration had so wished, the war could have been honorably terminated months ago;" that "peace

[11] VALLANDIGHAM, Clement Laird (1820-1871). Born in New Lisbon, Ohio. Admitted to Ohio Bar 1842. Member of State Legislature 1846. Member of Congress 1857-1863. During the Civil War bitterly opposed the government and became noted as one of the most extreme of the Northern Sympathizers with the Confederacy. Convicted in 1863 of disloyalty and banished. Defeated for governor of Ohio in 1864. He was killed by a pistol shot fired by him accidentally while arguing a murder case before a jury.

[12] Chaplain W. H. French, Major R. M. Corwine and Captain E. Gay, who had been included in the original commission were not present having been detailed on other service.

[13] 11th U. S. Infantry.

might have been honorably obtained by listening to the proposed intermediation of France;" that "propositions by which the Northern States could be won back, and the South guaranteed their rights under the Constitution, had been rejected the day before the late battle of Fredericksburg, by Lincoln and his minions," meaning thereby the President of the United States, and those under him in authority; charging "that the Government of the United States was about to appoint military marshals in every district, to restrain the people of their liberties, to deprive them of their rights and privileges;" characterizing General Orders No. 38, from Headquarters Department of the Ohio, as "a base usurpation of arbitrary authority," inviting his hearers to resist the same, by saying, "the sooner the people inform the minions of usurped power that they will not submit to such restrictions upon their liberties, the better;" declaring "that he was at all times, and upon all occasions, resolved to do what he could to defeat the attempts now being made to build up a monarchy upon the ruins of our free government;" asserting "that he firmly believed, as he said six months ago, that the men in power are attempting to establish a despotism in this country, more cruel and more oppressive than ever existed before."

All of which opinions and sentiments he well knew did aid, comfort, and encourage those in arms against the Government, and could but induce in his hearers a distrust of their own Government, sympathy for those in arms against it, and a disposition to resist the laws of the land.

The *Prisoner* asked delay to procure counsel, stating that he was engaged in preparing his plea, and required advice.

The COMMISSION was cleared for deliberation, and on its reopening, the *Judge Advocate* announced, as its decision, that the Commission would require the accused to plead "Guilty," or "Not Guilty," to the charge and specification, and would then adjourn for half an hour to permit the accused to procure counsel, when the Commission would proceed to hear the evidence for the prosecution.

The *Prisoner* denied the jurisdiction of the Commission, and refused to plead. The COMMISSION directed that the plea of "Not Guilty" to the specification and charge be entered for him by the *Judge Advocate*.

WITNESSES FOR THE GOVERNMENT

Captain H. R. Hill. Am captain of the 115th Regiment Ohio Volunteer Infantry. I was present at a meeting of citizens held at Mount Vernon on or about May 1, 1863, and heard the ac-

cused address that meeting. I was leaning on the end of the platform on which he was speaking. I was about six feet from him. In order to state his remarks in the order in which they were made, I will refresh my memory from manuscript notes made on the occasion.

The speaker commenced by referring to the canopy under which he was speaking—the stand being covered by an American flag—"the flag which," he said, "had been rendered sacred by Democratic Presidents—the flag under the Constitution."

After finishing his exordium, he spoke of the designs of those in power being to erect a despotism; that "it was not their intention to effect a restoration of the Union; that previous to the bloody battle of Fredericksburg an attempt was made to stay this wicked, cruel, and unnecessary war." That the war could have been ended in February last. That, a day or two before the battle of Fredericksburg, a proposition had been made for the readmission of Southern Senators into the United States Congress, and that the refusal was still in existence over the President's own signature, which would be made public as soon as the ban of secrecy enjoined by the President was removed. That the Union could have been saved, if the plan proposed by the speaker had been adopted; that the Union could have been saved upon the basis of reconstruction; but that it would have ended in the exile or death of those who advocated a continuation of the war; that "Forney, who was a well-known correspondent of the *Philadelphia Press*, had said that some of our public men (and he, Forney, had no right to speak for any others than those connected with the Administration), rather than bring back some of the seceded States, would submit to a permanent separation of the Union." He stated that "France, a nation that had always shown herself to be a friend of our Government, had proposed to act as a mediator"; but "that her proposition, which, if accepted, might have brought about an honorable peace, was insolently rejected"—it may have been "instantly rejected." That "the people had been deceived as to the objects of the war from the beginning"; that "it was a war for the liberation of the blacks, and the enslavement of the whites. We had been told it would be terminated in three months—then in nine months, and again in a year—but that there was still no prospect of its being ended. That Richmond was still in the hands of the enemy; that Charleston was theirs, and Vicksburg was theirs; that the Mississippi was not opened, and would not be so long as there was cotton on its banks to be stolen, or so long as there were any contractors or officers to enrich." I do not remember which word, contractors or officers, he used. He stated that a Southern paper had denounced himself and Cox, and the "Peace Democrats," as having "done more to prevent the establishing of the Southern Confederacy than a thousand Sewards." That "they proposed to operate through the masses of the people, in both sections, who were in favor of the Union." He said that "it was the purpose or desire of the Administration

to suppress or prevent such meetings as the one he was addressing." That "military marshals were about to be appointed in every district, who would act for the purpose of restricting the liberties of the people"; but that "he was a freeman"; that he "did not ask David Tod, or Abraham Lincoln, or Ambrose E. Burnside for his right to speak as he had done, and was doing. That his authority for so doing was higher than General Orders No. 38—it was General Orders No. 1—the Constitution. That General Orders No. 38 was a base usurpation of arbitrary power; that he had the most supreme contempt for such power. He despised it, spit upon it; he trampled it under his feet." That only a few days before, a man had been dragged down from his home in Butler County, by an outrageous usurpation of power, and tried for an offense not known to our laws, by a self-constituted court-martial—tried without a jury, which is guaranteed to every one; that he had been fined and imprisoned. That two men had been brought over from Kentucky, and tried, contrary to express laws for the trial of treason, and were now under the sentence of death. That an order had just been issued in Indiana, denying to persons the right to canvass or discuss military policy, and that, if it was submitted to, would be followed up by a similar order in Ohio. That he was resolved never to submit to an order of a military dictator, prohibiting the free discussion of either civil or military authority. "The sooner that the people informed the minions of this usurped power that they would not submit to such restrictions upon their liberties, the better." "Should we cringe and cower before such authority?" That we "claimed the right to criticise the acts of our military servants in power." That there never was a tyrant in any age who oppressed the people further than he thought they would submit to or endure. That in days of Democratic authority, Tom Corwin had, in face of Congress, hoped that our brave volunteers in Mexico "might be welcomed with bloody hands to inhospitable graves," but that he had not been interfered with. It was never before thought necessary to appoint a captain of cavalry as Provost Marshal, as was now the case in Indianapolis, or military dictators, as were now exercising authority in Cincinnati and Columbus. He closed by warning the people not to be deceived. That "an attempt would shortly be made to enforce the conscription act"; that "they should remember that this war was not a war for the preservation of the Union"; that "it was a wicked Abolition war, and that if those in authority were allowed to accomplish their purposes, the people would be deprived of their liberties, and a monarchy established; but that, as for him, he was resolved that he would never be a priest to minister upon the altar upon which his country was being sacrificed."

There were frames covered with canvas, all of which were decorated with "butternuts." One banner, which was borne at the head of a delegation, bore the inscription, "The Copperheads are coming." I saw hun-

dreds of the audience wearing butternuts, and many of them wearing copperheads cut out of cents. I heard no cheers for Jeff Davis, but I heard a shout in the crowd, that "Jeff Davis was a gentleman, and that was what the President was not."

Mr. Vallandigham. Did not the speaker refer to the Crittenden propositions, and condemn the rejection of them? In endeavoring to show that the restoration of the Union was not the object of the war, he stated a number of means, this among others, by which the war could have been ended; he considered, from the fact that none were adopted, that this was proof that the restoration of the Union was not the object of the war.

Mr. Vallandigham. Did I not quote Judge Douglas's declaration that the responsibility for the rejection of those propositions was with the Republican party?

The *Judge Advocate* objected to the question.

The COMMISSION decided that the question would not be admitted.

Mr. Vallandigham. When speaking in connection with Forney's *Press,* did I not say that "if other Democrats in Washington and myself had not refused all ideas and suggestions from some prominent men of the party in power, to make peace on terms of disunion, that I believed the war would have been ended in February?" When speaking of the proposition, viz: "That it was not a war for the restoration of the Union," he stated that, if the Democrats in Washington had united in a plan for the permanent separation of the Union, the thing would have been accomplished in February.

Mr. Vallandigham. Did I not expressly refer to myself in that connection, and say that I had refused, and always would refuse, to agree to a separation of the States—in other words, to peace, on terms of disunion? He stated something to that effect. He stated that he wished to have a voice in the manner in which the Union was to be reconstructed, and that he wished also our Southern brethren to have a voice.

Mr. Vallandigham. Referring to the *Richmond Enquirer* article, did I not say that "it, Jeff Davis's organ, had called upon Dictator Lincoln" to lock up Mr. Cox, Senator Richardson, and myself in one of his military prisons, because of our doing so much against Southern recognition and independence? Yes, substantially, he did say so.

Mr. Vallandigham. Referring to General Orders No. 38, did I not say that, in so far as it undertook to subject citizens not in the land or naval forces or militia of the United States, in actual service, to trial by court-martial or military commission, I believed it to be unconstitutional, and a usurpation of arbitrary power? He did, except the words "in so far."

Mr. Vallandigham. Referring to two citizens of Kentucky tried by Military Court in Cincinnati, did I not say that what they were charged with was actual treason, punishable by death, and that, if guilty, the penalty by statute was hanging, and they ought to be hung, after being tried by a judicial court and a jury—instead of which they had been tried by a military court, as I understood, and sentenced to fine

and imprisonment—one of them a fine of three hundred dollars? That was, in substance, what he said.

Mr. Vallandigham. Did I not also say, in that connection, that the rebel officer who was tried as a spy by the Military Court at Cincinnati was legally and properly tried and convicted, according to the rules and articles of war; that that was a clear case where the Court had jurisdiction? It is my recollection that he denounced the Court as an unlawful tribunal, and that he did use the above language, and then gave the instances referred to in my direct testimony. He probably did refer to Campbell's case.

Mr. Vallandigham. Did I not distinctly, in the conclusion of the speech, enjoin upon the people to stand by the Union at all events, and that, if war failed, not to give the Union up; to try, by peaceable means, by compromise, to restore it as our fathers made it, and that though others might consent, or be forced to consent, I would not myself be one of those who would take any part in agreeing to a dissolution of the Union? Yes. He said he and the peace men were the only ones who wished the restoration of the Union.

Mr. Vallandigham. Did not one of the "banners" you refer to as decorated with "butternuts" bear the inscription, "The Constitution as it is, and the Union as it was?" One of them bore that inscription.

Mr. Vallandigham. Do you mean to be understood to say that I heard the reference to Jeff Davis, or gave any assent to it whatever? I can not say that he did. It was said loud enough for him to hear, if his attention had been directed that way. He gave no assent; neither did he give any dissent.

Mr. Vallandigham. What was the size of the crowd assembled there that day? It was very large.

May 7.

Captain Hill continued.

Mr. Vallandigham. In speaking of the character of the war, did I not expressly say, as Mr. Lincoln, in his proclamation, July 1, 1862, said: "This unnecessary and injurious civil war?" I do not recollect that he did. The language he made use of I understood to be his own.

Mr. Vallandigham. Again, in speaking of the character of the war, did I not expressly give, as proof, the President's proclamation of September 22, 1862, and January 1, 1863, as declaring emancipation of the slaves in Southern seceded States, and as a proof that the war was now being waged for that purpose?

Mr. Vallandigham. I offer this question as an explanation of the purpose and object of my declarations as to the present character of the war, and as my authority for my statement. If I stated what the President stated, I could not be held disloyal for so doing.

The *Judge-Advocate.* The question is one which clearly puts in question, not the utterance of certain words, opinions, and sentiments, but their propriety, truth, and justice when uttered, and requires the Commission to pass judgment, not upon sentiments uttered by the accused, but upon certain proclamations of the President of the United States. The question is

designed, not to meet the merits of the case, but to prepare a record in his case of a political character, and for political uses.

The PRESIDENT. The question will not be admitted.

Mr. Vallandigham. Did you continue at the same place during the delivery of the whole speech? I did.

Mr. Vallandigham. Were your notes taken at the time, or reduced to writing after the speech was over? They were taken at the time. All I used before the Court were just as they fell from his lips.

Mr. Vallandigham. Were you not in citizen's clothes; and how came you to be at Mount Vernon that day? Did you go to Mount Vernon for the purpose of taking the notes and reporting the speech? I was in citizen's clothes, and I went up for the purpose of listening to any speech that might be delivered at that meeting. I had no order to take notes or report.

Mr. Vallandigham. Did you take notes of any other speech? I commenced taking notes of the speech of Mr. Cox, but I considered it harmless after listening to him a short time, and stopped. I took no notes of any other speeches.

Mr. Vallandigham. Were you not expressly sent to listen to my speech on that occasion? I was not, any more than to the other speeches.

Mr. Vallandigham. By whom were you sent? By Captain Andrew C. Kemper, Assistant Adjutant-General of the military commandant of the city of Cincinnati, Ohio. I reported to Colonel Eastman himself, and from there went to Headquarters Department of the Ohio.

John A. Means. Am Captain 115th Ohio Volunteers, was present at a meeting of citizens, held at Mount Vernon, Ohio, on or about May 1, 1863; heard the accused address that meeting. Most of the time about ten feet in front of the stand—directly in front. I heard the whole of his speech. He stated, at one time, that the war was not waged for the preservation of the Union. That it was an Abolition war. That it might have been stopped, or peace restored, some time ago, and the Union restored, if the plan which had been submitted had been accepted.

The accused stated, that "if the plan he had proposed himself had been adopted, peace would have been restored, the Union saved by a reconstruction, the North won back, and the South guaranteed in their rights. That our army had not been successful; that Richmond was not taken, Charleston, nor Vicksburg; that the Mississippi was not opened, and would not be so long as there was cotton to sell, or contractors to enrich. He spoke in regard to the rebuke of the Administration at the last fall election; that no more volunteers could be had—that the Administration had to resort to the French conscription law. That he would not counsel resistance to military or civil law; that was not needed. That a people were unworthy to be freemen who would submit to such encroachments on their liberties. He was then speaking of the conscription act. He said he believed the Administration was attempting to erect a despotism. That in less than one month Mr. Lincoln had plunged

the country into this cruel, bloody, and unnecessary war. He stated that General Orders No. 38 was a usurpation of power; that he despised it, spit upon it, and trampled it under his feet; and that he, for one, would not regard it. He styled the officers of the Administration, and the officers of the army, as minions of the Administration, or as Lincoln's minions. I do not recall anything else. I will add that he said he did not ask Tod, or Lincoln, or Burnside, whether he might speak as he was doing, and had done; that he was a free man; that he spoke as he pleased, and where he pleased. He said that proclamations and military orders were intended to intimidate the people, and to prevent them from meeting as they were then that day doing. That he claimed the right to discuss and criticise the actions of civil and military men in power. He advised, at the close of his speech, to come up together at the ballot-box and hurl the tyrant from his throne. In one part of his speech he styled the President as "King Lincoln."

Mr. Vallandigham. Did you make any notes at all of my speech, or are you testifying solely from memory? I took no notes at the delivery of the speech; but, after Pendleton commenced speaking, went to the hotel and made minutes. I made those minutes an hour and a half, or thereabouts, after I heard the speech.

Mr. Vallandigham. You speak of my saying the North might be won back. Was it not the South might be won back, her rights being guaranteed under the Constitution? No: I noticed this particularly. It struck me very forcibly.

Mr. Vallandigham. You say that I said that I would not counsel resistance to military or civil laws. Did I not expressly counsel the people to obey the Constitution and all laws, and to pay proper respect to men in authority, but to maintain their political rights through the ballot-box, and to redress personal wrongs through the judicial tribunals of the country, and in that way put down the Administration and all usurpations of power? He said, at the last of his speech, to come up united at the ballot-box and hurl the tyrant from his throne. I did not understand him to counsel the people to submit to the authorities at all times. I do not remember the language as stated, but part of it I remember.

Mr. Vallandigham. Did I not say that my authority to speak to the people in public assemblages on all public questions was not derived from General Orders No. 38, but from General Orders No. 1, the Constitution of the United States—George Washington, commanding? I understood him to say, that his authority to speak to the people was higher than General Orders No. 38, by that military despot, Burnside. It was Orders No. 1, signed Washington.

Mr. Vallandigham. Were not the words "Tod, Lincoln and Burnside" used, and that I did not ask their consent to speak? He did use these words at one time.

Mr. Vallandigham. Were not remarks you say I made, about spitting and trampling under foot, expressly applied in reference to arbitrary power gener-

ally, and did I not in that connection refer to General Orders No. 9 in Indiana, signed by General Hascal, denying the right to criticise the war policy of the Administration? The remarks in reference to spitting upon, etc., were made in direct reference to General Orders No. 38. He some time afterward, in speaking of the tyranny of the Administration, said that a General Order had been issued in Indiana denying the rights of the people to criticise the military power of the Administration, and, if submitted to, would be followed by a similar one in Ohio.

Mr. Vallandigham. Were you not present in citizen's clothes? How came you to be at Mount Vernon that day—by whose order, and were you sent for the purpose of listening to and reporting the speech? I was present in citizen's clothes, by order of Colonel Eastman. I was sent there to listen to the speech, and report his language as near as I could, and I did make report to Colonel Eastman.

The *Judge Advocate* stated that he did not propose to re-examine the witness, and having no other witnesses, would here close the testimony for the prosecution.

The *Prisoner* asked to consult with his counsel, who did not appear, and had not appeared in the court-room during the trial, before entering upon his defense.

WITNESSES FOR THE PRISONER

Hon. S. S. Cox.[14] I was present at a public political meeting of citizens of Ohio, at Mount Vernon, on Friday, May 1, 1863, as one of the speakers. I heard the speech of Mr. Vallandigham, that day. Before the speaking began, I was on the stand a few feet from Mr. Vallandigham, most of the time standing near him, so that I could not fail to hear all that he said. I do not think my attention was distracted but for a few moments during the entire speech. I had not heard Mr. Vallandigham speak since the adjournment of Congress, and as I came in from the West, I did not know that he was to be there. I took an especial interest in listening to his speech throughout. Having to follow him, I naturally noted the topics which he discussed. The only allusion he made to General Burnside was, I think, near the beginning of his speech, in which he said he was not there by the favor of Abraham Lincoln, Governor Tod, or Ambrose E. Burnside. No epithet was applied to him during the speech. If there had been I should have noticed it, because General Burnside is an old friend of mine, and I should have remembered

[14] Cox, Samuel Sullivan (1824-1889). Born in Zanesville, Ohio. Graduated Brown University 1846. Admitted to the Bar. Became owner and editor of *Columbus Statesman*, 1853. Secretary of Legation at Peru 1856. Member of Congress (Ohio) 35th, 36th, 37th and 38th Congresses. Removed to New York 1865. Member of Congress (New York) 41st, 42nd, 46th and 47th Congresses. Was a popular lecturer and author of a number of books.

any odious epithet applied to him. The only reference made to order No. 38 was something to this effect: that he did not recognize (I do not know that I can quote the language) Order No. 38 as superior to Order No. 1, the Constitution, from George Washington, commanding. I can not recall any denunciatory epithets applied to that order. I did not hear any that I can remember. The only criticism I heard was that in reference to the Constitution. Mr. Vallandigham discussed these matters very briefly, taking up the larger portion of his speech with another proposition. The other proposition was in connection with closing of the war by separation. He charged that men in power were willing to make peace by separation. He exhausted some time in reading proofs from publications of Montgomery Blair and Forney. He also stated there were private proofs yet to be disclosed, which time would disclose. He said they pursued this thing until they found that Democrats were unwilling to make peace, except upon a basis of the restoration of the whole Union. He denounced bitterly any attempts to restore peace by a separation of the States. He denounced, in strong language, any usurpation of power to stop public discussions and the suffrage. He appealed to the people to protect their rights, as a remedy for every grievance of a private nature. He counseled no resistance except such as might be had at the ballot-box. Nothing said by him at all looking to forcible resistance of either laws or military orders. He stated the sole remedy to be in the ballot-box, and in the courts. I remember this distinctly, for I had been pursuing the same line of remark at Chicago and Fort Wayne, and other places where I had been speaking, and with the purpose of repressing any tendency toward violence among our Democratic people. My best recollection is that Mr. Vallandigham did not say a word about the conscription. He did refer to the change in the policy of the war, and I think devoted some time to show that the war had been deviated from a war for the restoration of the Union into a war for the abolition of slavery. He referred, in that connection, to the Crittenden Resolutions, declaring the war to be one for the restoration of the Union, and not to break up the "institution" of a State. He occasionally used the words "the President and his minions," but I did not understand him to use them in connection with the army. It was not in that connection. It was in connection with arbitrary arrests. He applied some pretty strong epithets to spies and informers, whom he did not seem to like very much. I remember the metaphor, that "he would not be a priest to minister at the altar of disunion." He was speaking about the Union, and his attachment to it. He invoked the people under no circumstances to surrender the Union.

The witnesses, *Locky Harper, J. T. Irvine,* and *Frank H. Hurd,* summoned for the defense, not having appeared, the

Judge Advocate stated that if it would avoid an adjournment he would admit that they, if present, would, under oath, testify substantially the same as Hon. S. S. Cox.

Thereupon the *Prisoner* stated that he would close his defense, and offer no further testimony.

The *Judge Advocate* stated that he did not propose to offer any further testimony.

The *Prisoner* then read to the COMMISSION the following:

Arrested without due "process of law," without warrant from any judicial officer, and now in a military prison, I have been served with a "charge and specifications," as in a Court-martial or Military Commission.

I am not in either "the land or naval forces of the United States, nor in the militia in the actual service of the United States," and therefore am not triable for any cause, by any such Court, but am subject, by the express terms of the Constitution, to arrest only by due process of law, judicial warrant, regularly issued upon affidavit, and by some officer or Court of competent jurisdiction for the trial of citizens, and am now entitled to be tried on an indictment or presentment of a Grand Jury of such Court, to speedy and public trial by an impartial jury of the State of Ohio, to be confronted with witnesses against me, to have compulsory process for witnesses in my behalf, the assistance of counsel for my defense, and evidence and argument according to the common law and the ways of Judicial Courts.

And all these I here demand as my right as a citizen of the United States, and under the Constitution of the United States.

But the alleged "offense" is not known to the Constitution of the United States, nor to any law thereof. It is words spoken to the people of Ohio in an open and public political meeting, lawfully and peaceably assembled, under the Constitution and upon full notice. It is words of criticism of the public policy of the public servants of the people, by which policy, not by force, but by free elections and the ballot-box. promoted. It was an appeal to the people to change that

policy, not by force, but by free elections and the ballot-box. It is not pretended that I counseled disobedience to the Constitution, or resistance to laws and lawful authority. I never have. Beyond this protest I have nothing further to submit.

The *Judge Advocate* stated that he had no reply to make to the statement of the accused. In so far as it called in question the jurisdiction of the Commission, that question had been decided by the authority convening and ordering the trial, and he was not called upon to discuss it, nor had the Commission been willing at any time to entertain it. In so far as any implications or inferences, designed or contemplated in the statement, of his right of counsel, and to have witnesses summoned for his defense, were involved, the Judge-Advocate had summoned such witnesses as the accused had requested, and he had had the benefit of three lawyers of his own choice as counsel, who had, however, remained continuously in an adjoining room during the continuance of the trial —the accused, himself, for some reason unknown, not having introduced them before the Commission, though the Commission had expressly authorized him to do so, and had adjourned to permit his obtaining their presence. The facts alleged in the specification were to be decided upon the evidence before the Commission, and he believed it unnecessary to comment thereon. The question of the criminality of the facts alleged, if proved, was also a question purely for the Commission, and which the Judge-Advocate deemed it unnecessary to enforce by argument. He, therefore, without further comment, submitted the case to the consideration of the Commission.

The COMMISSION was cleared for deliberation.

THE VERDICT.

May 16.

The COMMISSION, after mature deliberation on the evidence adduced, and the statement of the accused, find the accused, Clement L. Vallandigham, a citizen of the State of Ohio, as follows:

Of the specification (except the words, "That propositions

by which the Northern States could be won back, and the South guaranteed their rights under the Constitution, had been rejected the day before the battle of Fredericksburg, by Lincoln and his minions," meaning thereby the President of the United States, and those under him in authority, and the words, "asserting that he firmly believed, as he asserted six months ago, that the men in power are attempting to establish a despotism in this country, more cruel and more oppressive than ever existed before") "Guilty."

And as to these words, "Not Guilty."

Of the charge, "Guilty."

And the Commission do, therefore, sentence him, the said Clement L. Vallandigham, a citizen of the State of Ohio, to be placed in close confinement in some fortress of the United States, to be designated by the commanding officer of this Department, there to be kept during the continuance of the war.

The finding and sentence of the *Prisoner* was at once confirmed by General Burnside, who designated Fort Warren, Boston Harbor, as the place of his imprisonment. But on May 19th President Lincoln ordered that he be sent outside of the Military lines on pain of imprisonment in case of his return.[15]

On May 9th in the Circuit Court of the United States for the Southern District of Ohio, Judge Leavitt [16] presiding, the

[15] ORDER OF THE PRESIDENT

U. S. MILITARY TELEGRAPH,
Cipher.] May 19, 1863.

To MAJOR-GENERAL BURNSIDE,
Commanding Department of the Ohio:

SIR—The President directs that, without delay, you send C. L. Vallandigham, under secure guard, to the Headquarters of General Rosecrans, to be put by him beyond our military lines, and that in case of his return within our lines he be arrested and kept in close custody for the term specified in his sentence.

By order of the PRESIDENT.

ED. M. CANBY,
Brig.-Gen. and A. A. G.

[16] LEAVITT, Humphrey Howe (1796-1873). Born in Suffield, Conn. Removed to Ohio. Member State Legislature 1825, State Senate 1827. Representative in Congress 1831-1834. Afterward for many years Judge of the United States District Court for Ohio.

prisoner by his counsel, Hon. George E. Pugh [17] applied for a writ of habeas corpus. The writ was refused.[18]

[17] PUGH, George Ellis (1822-1876). Born in Cincinnati, O. Member Ohio Legislature 1848. City Solicitor Cincinnati 1850. Attorney General of Ohio 1851. United States Senator 1855-1861.
[18] 28 Fed. Cases 874 Case No. 16816.

THE TRIAL OF MOSES SIMONS FOR ASSAULT AND BATTERY, NEW YORK CITY, 1818.

THE NARRATIVE

Even in New York in the second decade of the Nineteenth Century the race question was a live one. Moses Simons was the son of wealthy parents; he was a member of the Bar of the metropolis of America; and was a man of good manners and address, but he was a mulatto. He associated with white men in his profession; he lived at the best hotels and dined at the best restaurants, but it was always on sufferance and before long objections by other patrons caused him to change his landlord. He even attended the public dancing academies and danced with the white young ladies, but this soon attracted attention. Criticisms and complaint being made to the dancing master, he was refused entrance one night even after a ticket had been sold to him. He was angry and struck the proprietor whereupon he was arrested, convicted and fined for assault and battery.

THE TRIAL [1]

In the Court of General Sessions, New York City, February, 1818.

JACOB RADCLIFF,[2] *Mayor*
JOHN B. COLES, REUBEN MUNSON } *Aldermen.*

February 2.

The defendant, a member of the Bar of New York was in-

[1] *Bibliography.* * "New York City Hall Recorder," see ante p. 61.
[2] See Mazarra's Case, ante p. 60.

dicted for an assault and battery, committed on Charles Berault, on the 8th day of January last.

Hugh Maxwell,[3] District Attorney for the People.

Mr. Bogardus[4] and *Mr. Fay*[5] for the Defendant.

Charles Berault. I am a Frenchman, and a dancing master. I have had under my professional care, for a long time, a great number of youths of both sexes, in this city. My place of instruction is a public ball room at Washington Hall, which I rent for this purpose. Any gentlemen, not belonging to the school, wishing to participate in the amusement with the scholars, may attend on particular days in the week, by purchasing for a dollar, of the barkeeper, a ticket, which on being presented to the door keeper of the dancing room, entitled the holder to admittance. The dances at which those not belonging to the school are admitted, are called public dances.

On December 20th, in the evening, defendant, with his brother, attended one of the publics, and at that time, my scholars expressed no particular disapprobation. Defendant and his brother came again. I was afterward informed, by several of my scholars, that their presence was generally disagreeable to the school; and that, unless they were excluded, a great number of the scholars would leave. Several scholars communicated the same idea to Mr. M'Intyre, the keeper of Washington Hall, who informed me of it. A few evenings later defendant and his brother came a third time and as soon as I saw them I took them apart from the others in the ball room and, confidentially, imparted to them the disapprobation expressed by the scholars; at the same time, informing them, as for myself, I had no objection to their being there, but that I was fearful of the loss of many of the scholars, should they continue their attendance. Both appeared to be perfectly satisfied with my explanation and defendant announced that if I would permit them to take a turn or two in the room, as if nothing had happened they would then leave the school. This request I granted, and they went away.

On the evening of January 8th laid in the indictment, defendant, having purchased of the barkeeper, a ticket for admittance, came to the door, when the doorkeeper, according to my direction, refused him admittance. Hearing the altercation at the door between defendant and the keeper, I came up and informed the defendant that he could not be admitted, and that I, Berault, had written him a

[3] See Mazarra's Case, ante p. 60.

[4] BOGARDUS, Robert (1771-1841). One of the eminent lawyers of New York City in the first part of the nineteenth century. Colonel of infantry in the war of 1812 and sometime a member of the New York Senate.

[5] FAY, John. Born in Worcester, Mass. Practiced law in New York City and represented it in Congress from 1819 to 1821.

letter which ought to satisfy him. He demanded that I give him the names of the persons who had expressed their disapprobation at the attendance of his brother and himself. I informed him that this request was impossible; he said, that he would not believe me, unless I would give up those names and as I was turning to go into the ball room he slapped me in the face.

THE DEFENSE

Mr. Fay. The defendant will show that he is an accredited gentleman; that he received a liberal education, in one of the best universities in the country, and that his connections are wealthy and respectable. Defendant, on this occasion, having purchased a ticket, which entitled him to an admittance, was refused by the master; and in a momentary excitement of passion, while smarting under the indignity offered his feelings, he inflicted the blow. We will contend that the master, by this outrage, was, in fact, the first aggressor; he thereby struck the first blow, and had no right to complain. The defendant will further rely on the constitution which has declared all men equal; on the constituted authorities of the country, by whom he has been admitted a member of an honorable profession; and, in fine, he will make his appeal to the sympathies and moral feelings of the jury; for an enlightened community will be ready to sanction this philanthropic sentiment, though varied from the words of the poet:

> "Honor and shame from no 'complexion' rise,
> "Act well your part, there all the honour lies."

Mr. Van Deuzen. On the evening of the assault and battery the defendant purchased a ticket and came to the door of the ball room. Berault requested defendant not to go in, and it was my impression that Berault shoved or pressed against Simmons, to prevent his entrance. Defendant requested the master to give up the names of those who had objected to his attendance, which request Berault refused to grant.

Cross-examined. The words spoken by Simons prefatory to the blow, were, "If you will not give me up the names, take that."

Several witnesses testified that defendant is reputed to be the nephew of Solomon Simons, a wealthy and respectable man, at Savannah, where he received the rudiments of his education, and came into the northern states well recommended by several gentlemen of respectability, among whom was General Por-

ter. Defendant was placed at an academy in one of the towns in Connecticut, and while there, boarded at the house of one of the first families in that State. Having finished his preparatory studies in the academy, he entered New Haven College, and during his continuance there, associated with students, the sons of respectable gentlemen, and attended the public balls. He then removed to Litchfield, in the same State, and commenced the study of the law, at Judge Reeve's law school. He finished his legal studies at Albany, in the office of Abraham Van Vechten, an eminent counselor of that city. While at these several places, his general character and deportment were good, and he had uniformly associated with persons of respectability. At Albany, he boarded at Gregory's hotel, where the first gentlemen in the country were entertained.

Edmund C. Genet. Have known the defendant since 1812. While with Mr. Van Vechten defendant was much respected and no other prejudice existed against him except that on account of his complexion, and that not among persons of an enlightened mind. Defendant is a person of a nice, delicate sense of honor, and under the peculiar circumstances in which he is placed, his demeanor has been as prudent and discreet as possible.

REBUTTAL.

Israel Purdy. Was a subscriber of Berault, and attended the publics; the dissatisfaction at his attendance and his brother, which was pretty general in the school, rested solely on the ground of their complexion. The blow given by the defendant to Berault was an act of retaliation.

Peter M'Intyre. Am the keeper of Washington Hall. The school consists of six or seven hundred young persons of both sexes; ten or twelve of the gentlemen scholars complained to me that Berault had admitted two colored men into his public, and that if he continued to do so, they would leave the school. One of these young men told me that defendant's brother had dances with the handsomest girl in the school. I imparted these complaints to Berault. I keep a public ordinary for gentlemen, and defendant, some time ago, dined there, and once an objection was made by a gentleman to the attendance of defendant at the dinner table.

William B. Cozzens. Am a member of the firm of Marling and Cozzens, keepers of Tammany Hall. A public ordinary is kept at our house; defendant used to dine there; I have heard frequent complaints, especially from Southern gentlemen, against defendant's dining at the same table with them. I mentioned this to defendant, in a confidential manner and he withdrew his attendance. Though I do not know whether I would have had a legal right to exclude defendant from the ordinary, yet I have no doubt this measure, on the score of interest, would have conduced to the advantage of my establishment.

William L. Rose. Am a counselor-at-law. I boarded at Tammany Hall while defendant attended the ordinary there. The dissatisfaction at his being at the table was general among the guests of Marling and Cozzens.

John Watts (for defendant.) The defendant boarded at Gregory's hotel, in Albany; and while there, gentlemen of the first respectability resorted to the house, and dined at the same table with defendant. Among the rest, I recollect that Governor Ogden of New Jersey dined at Gregory's, and, in a friendly manner, shook hands with the defendant. His character is perfectly fair and unexceptional.

Mr. Maxwell. Dr. Watts, suppose you had a sister at a dancing school, or at a public ball, would you be willing that she should dance with the defendant —however fair his character may be? Mr. Attorney, I have my private opinions, and those opinions are sacred. I shall, therefore, decline answering your question.

Mr. Fay summed up the case to the jury and *Bogardus* followed him.

Mr. Maxwell summed up on behalf of the prosecution.

The MAYOR (to the jury): The determination of this case does not depend upon the rules of politeness; and much of the matter brought into discussion is foreign to the issue. The only point in the case is, whether defendant is guilty of an assault and battery on Bernault. It appears from the testimony, that defendant and his brother, being at the school room of Bernault, were apprized by him, in a confidential manner, that their attendance was a matter of dissatisfaction to the scholars. On this suggestion defendant appeared satisfied, and with his brother, departed. Some time afterwards he purchased a ticket, and came to the school-room door for admittance. After what had previously taken place, it will rest with the jury to say, whether this conduct does not indicate an intention on his part of making a disturbance. It cannot be denied but that the master, having hired that room for a specific purpose, had the right of excluding any person he thought proper.

But it is urged, that if he exposed tickets for sale in a public bar-room, whoever purchased had a right to be admitted; and that, had the master wished to exclude the defendant, the bar-keeper should have been instructed not to sell him. But it will be easily perceived, that this precaution could not have produced the effect; for any person, however obnoxious to the master and his scholars, could have pur-

chased a ticket, by sending another person to the bar-keeper.

The purchase of this ticket, admitting it to have taken place by the permission of Berault, created a private contract between him and defendant; and the refusal on the part of the master, to admit the defendant, might, perhaps, entitle him to a suit to recover back the money paid, with such damages as he had sustained. But it does not appear that this assault and battery was committed by defendant while endeavoring to press his way into the room, in pursuance of his rights; but, for the purpose of retaliating for that which he conceived to be an injury or insult. Should the jury believe this, it will be their duty to convict him.

Verdict GUILTY. Defendant fined $10 and costs.

THE TRIAL OF JOEL CLOUGH FOR THE MURDER OF MARY W. HAMILTON, NEW JERSEY, 1833.

THE NARRATIVE

This is the old, old story of love and jealousy. At the boarding-house and private inn of Mrs. Longstreth at the village of Bordentown in New Jersey in the year 1833, there lived her daughter, Mrs. Hamilton the widow of a physician, and one Joel Clough, who had been a contractor and was a man of some intellect. He fell violently in love with the widow, but she gave him little encouragement and finally let him know positively that she would not marry him. This seems to have affected him very much. He took to drink, and entered on a carouse which lasted several weeks in the neighboring cities of Pennsylvania, New York and New Jersey, then he came back to Mrs. Longstreth's house. Mrs. Hamilton and the family treated him in a friendly way, because he complained of being ill and spent part of the time in bed. Finally his passion urged him to take revenge, and one day, after leaving the table and going to his own room on the plea of illness, he asked Mrs. Hamilton to come in and speak to him. She did so, whereupon he seized her and with a dirk which she had given him as a present some days before stabbed her in more than a dozen places. The noise alarmed the family and some of the employés in the neighboring inn who at once rushed upstairs but seeing the dirk most of them rushed down again for weapons. Mrs. Hamilton stumbled downstairs into her mother's arms and died. At the trial there was great excitement. Eminent counsel for the prisoner were brought from New Jersey and Philadelphia, but the plea of insanity had little to sustain it and Clough was speedily convicted. Later

he managed to escape from the jail where he was confined, but he was soon captured and expiated his crime upon the gallows.

THE TRIAL [1]

In the Supreme Court of New Jersey, Mount Holly, May, 1833.

[1] *Bibliography.* * "Report of the Trial of Joel Clough, on an indictment for the Murder of Mrs. Mary W. Hamilton, before Chief Justice Hornblower, and four Associate Judges, at Mount Holly, New Jersey, in June, 1833. Boston: Published by Beals, Homer & Co., No. 36 Congress Street. 1833."

The preface says: "This is one of the most interesting trials that has taken place in this country for many years; and with the exception of that of the Rev. Mr. Avery it has produced quite as much excitement as any other capital trial on record. Mr. Clough is a native of New Hampshire, and is said to have an extensive acquaintance in this quarter. A correspondent of the *Newark Daily Advertiser,* who appears to have had a favorable opportunity for observation in the Court Room, gives the annexed interesting account of the Murderer:

"'The prisoner is, I suppose, about 28 years old.—He looks very pale but rather genteel in his person and dress, and seems as if he paid much attention to his toilet. Upon taking his place in the prisoner's box, he looked up to the Chief Justice and made a graceful bow; and while the indictment was read to him, he stood erect, firm and composed. Not a muscle of his face moved; and to the thrilling question, "are you guilty or not guilty?" he responded in a low, soft, but yet in a firm and distinct voice, "Not guilty, sir." Friday morning was then assigned for his trial. Long before the bell rung for court on that morning, the people were pressing into the Court House, and the crowd was so great, that the Sheriff had to conduct the Chief Justice through a back door into his seat. Pretty much all the female fashion and beauty of Mount Holly were present—from 100 to 200 ladies. The venerable and respected mother and sister of the deceased, and other females and members of the family, were examined on the first day. As they severally turned to look at the prisoner, when asked by the counsel if they recognized him, he familiarly and gracefully, but with a fixed and rather gloomy countenance, inclined his head, or bowed to them; and when the old lady, with the tears running down her cheeks, turned quite round to look at him, he instantly rose and bowed to her in the most grave and respectful manner. The testimony was of the most thrilling and touching character. The description of her (Mrs. Hamilton's) delicate person—her amiable character—her piercing shrieks, and her death struggles, while he held and pushed still deeper and deeper, the murderous dirk into her bosom, was truly affecting. But when the trunk was opened and the blood stained dirk, the broken breast

HON. JOSEPH C. HORNBLOWER,[2] *Chief Justice and Four Associate Judges.*

May 31.

The prisoner having been indicted for the murder of Mary W. Hamilton, was arranged and pleaded Not Guilty. After 23 preëmptory challenges and seven for cause the following were

pin, her bloody garments, especially her corsets, pierced with ten holes through that part of it which had covered her left breast, and stiffened and red with the cold blood of her that had worn it, as if it had been literally dyed in blood; it seemed too much for every one but the prisoner. He looked upon the bloody credentials with a steady, gloomy gaze, discovering in his countenance, however, no internal emotion, nor in the least changing his position, which he uniformly occupies, reclining on his elbow, and resting his head on the palm of his hand, on which he wears a black glove. But the effect of this exhibition, followed up by the physician's description of her broken ribs, and almost riddled heart and lungs, produced a gust of feeling and emotion in the crowded audience that could not be suppressed. Every bosom swelled—every eye was suffused with tears—and for a few moments the investigation was suspended.

"Throughout this protracted trial, during which an immense mass of testimony was received, not a blot or stain was affixed to the character of the lamented Mrs. Hamilton; her reputation, adorned by every virtue that can dignify and beautify her sex, was most triumphantly sustained; and she was proved to have been chaste, beautiful, urbane, and lively, and as pure as the unclouded sky. During the recital of the tragic story of her death, many a manly cheek was bathed with tears, and the affecting relation of it by her mother was almost overwhelming. The object of the counsel for the defense, was evidently to prove the insanity of the prisoner, and to attain this, their utmost efforts were directed, with what success the public must judge. The ability and fidelity, however, deserves great praise, as did also, the efforts of the counsel for the prosecution."

• "The only True and authentic Confession of Joel Clough containing his Life and Confession from 14 years of age, anecdotes, letters, Escape, Capture, etc., written by Himself and placed in the hands of one of his Attornies for Publication. Copyright secured. Philadelphia. Published by Robert DeSilver, No. 110 Walnut St." The title page has a picture of a man hanging on a gallows and below a coffin. There is a good page size engraving of Clough (from the original miniature delivered by Clough to Mr. Shinn and to be sent to his mother). The portrait is that of a good looking and intelligent man dressed in the wide collar coat and the high black stock of the day. The appendix contains a letter from Clough to his mother written forty-eight hours before his execution and letters from his two brothers to him after his conviction.

[2] HORNBLOWER, Joseph Coerton (1777-1864). Born in Belleville, N. J. Chief Justice of New Jersey 1832-1846.

sworn as jurors: Amos. W. Archer, Samuel Ridgway, Joseph Kirkbride, Samuel B. Finch, Joseph Deacon, James Logan, Absolem H. Smith, John C. Ridgeway, Peter Crozer, George Black, Richard J. Bond, William Stokes.

Chief Justice HORNBLOWER. There are, I am told, some gentlemen of the press present from Philadelphia and New York for the purpose of reporting this case for publication. Now I strictly enjoin them as a duty they owe to the cause of justice to withhold their publication of the proceedings until its first termination.[3]

The indictment consisted of two counts, the first charging the prisoner at the bar with having, on the 6th day of April, 1833, in the village of Bordentown, township of Chesterfield, and in the county of Burlington, murdered Mary W. Hamilton, by thrusting and striking her with a dirk in her left breast, through the same and into her heart, inflicting a wound three inches deep and one inch wide, and thereby causing her death, in fifteen minutes thereafter. The second count charged the prisoner with inflicting three several mortal wounds in the left breast with a dirk, three inches deep and two inches wide, of which wounds the said Mary W. Hamilton died.

John Moore White,[4] Attorney General. *Samuel L. Southard,*[5] and *Joseph Warren Scott*[6] for the State.

[3] Until the verdict of the jury. They severally acceded to the report says the reporter of the trial.

[4] WHITE, John Moore (1770-1862). Attorney General of New Jersey, 1833-1838. Associate Justice of the Supreme Court of New Jersey, 1838-1845.

[5] SOUTHARD, Samuel Lewis (1787-1842). Born in Baskinridge, N. J. Member New Jersey Legislature 1815. Judge Supreme Court 1815. U. S. Senator 1821, 1833-1842. Secretary of Navy 1830. Governor of New Jersey 1832.

[6] SCOTT, Joseph Warren (1778-1871). Was profoundly learned in the law and had a large and lucrative practice. He was appointed Prosecutor of the Pleas for the County of Middlesex, N. J., but beyond this he never held any official position. He was treasurer-general of the General Socety of Cincinnati, and President of the New Jersey Society.

David Paul Brown,[7] *Isaac Hazlehurst*[7a] and *George Cambloss*[8] for the prisoner.

The *Attorney General*. This is a case of murder, and one of the few which, by laws of the State, is punishable with death. This fact renders the issue of this trial all-important to the defendant, between whom and the country you are bound to pass. In presenting before you all the facts of the case, it is particularly incumbent upon you to give them their due weight, and to consider them seriously and impartially, in order to ascertain the guilt or innocence of the prisoner at the bar. In the decision you give to this important subject, you are to show your regard for that country whose laws have been broken by the willful and deliberate murder of a helpless, innocent, and virtuous female. And you are so to deliberate upon and consider this subject, that the counsel of both the prisoner and the country may implicitly rely upon your intelligence and good faith to give it a fair, a full, and an honest decision. It is one of those cases which, from its character and the proof on which it rests, will relieve you from much of the difficulty usually involved in trials of this kind,—whether to convict the accused of murder or manslaughter. You will not doubt the murder with which the prisoner stands charged; you will not doubt who gave the fatal blow of which Mrs. Hamilton died; and there will be no difficulty in relation to the manner or the cause of her death. Everything will be made out with such perfect clearness, that it will stand before you, in unerring certainty, as a case of murder. If the facts are proved to your entire satisfaction, you can have no doubt of the prisoner's guilt.

[7] See Holmes Case, ante p. 368.

[7a] HAZLEHURST, Isaac (1808-1891). Born in Philahelphia. Admitted to the bar (Phila.) 1831. City Solicitor 1854. Trustee Penn. Inst. for Deaf and Dumb. Member State Legislature and was National American Candidate for Governor of State of Pennsylvania.

[8] CAMBLOS, George W. Was admitted as Attorney to the New Jersey bar Sept. Term, 1829 but never became a counselor.

WITNESSES FOR THE STATE

Mary Imlay. I know the prisoner at the bar; knew him at Bordentown, at Mr. Thompson's, where he boarded, and where I first saw him, not more than two years ago; he afterwards left, and went to board at Mrs. Longstreth's; was in the family part of the time he was there. On the day of the murder he breakfasted with the family, and there were present at table, three gentlemen, Mrs. Hamilton, and Mrs. Longstreth. I was making dresses, in which Mrs. Hamilton assisted me; the prisoner at breakfast was polite in helping the company, He took the little daughter of Mrs. Hamilton, about eight years old, on his lap, patted her cheeks, and talked to her about her lessons at school. He wished Mrs. Hamilton to accept a note book for her daughter, as he did not want it, which after some reluctance she did. Soon after, he left the room, said he was going to lie down, and I saw him no more until after Mrs. Hamilton was murdered. On Saturday between 12 and 1 o'clock, Elizabeth, the little sister of Mrs. Hamilton's, came downstairs and alarmed the house by saying that someone was murdering her sister. Mrs. Longstreth and myself immediately left the room. I went to the back entry door, and let Mrs. Longstreth go on first; she went upstairs, into the room where Mrs. Hamilton, her daughter, was, lifted her hands and screamed; did not see Hamilton until after she was dead, which was near half an hour after she left the room. Mary Brittenham, Hannah Herbert, Mrs. Reeves, and some others, were with me when I saw her dead.

Cross-examined. Lived in the house with Clough only two days, had seen him frequently, but had nothing more than a mere speaking acquaintance with him; never saw him at Mrs. Longstreth's before. He was, between meals, sometimes in the room with Mrs. Hamilton. On Friday evening before her death, he went to the Postoffice to get letters, and Mrs. Hamilton told him to see if there were any for her. He went upstairs to lie down every day. He said he had had an attack of the pleurisy, and had not got well of the pain in his side and breast. In the parlor, Clough and Mrs. Hamilton were speaking in a familiar and friendly manner together, and I saw no difference between the last interview and other times.

Anna P. Longstreth. Have known the prisoner about one year; he lived at my mother's, Mrs. Longstreth. I was at home at the time of the murder. First saw Clough about 7 o'clock that day in the front parlor; it was on Saturday the 6th day of April last; he breakfasted with the family; as he went upstairs I went up immediately after him into the family room. As I was going up with a skein of yarn in my hand, I told him if he did not get out of my way I would throw it at him, which I did in sport. He said he was going to lay down. The passage to his room, was up that pair of stairs, and so was that to the family room, and he had to pass the door of the latter room to get to his own.

I went downstairs and saw my sister, Mrs. Hamilton, again in the parlor. Did not see Clough again until Mrs. Hamilton's death, when he was in the yard; they were taking him away. It was not half an hour after I saw Mrs. Hamilton in the parlor until her death.

Cross-examined. I am the daughter of Mrs. Longstreth; had been absent from home, but returned about a year before my sister's death, when I found Clough there. While there he was upon good terms with the family; don't know of any personal difference between him and any member of it; he was kind and attentive to all and they to him; don't know that he was more attentive to Mrs. Hamilton than any of the rest of the family, and he was not treated with more kindness by them than the other boarders were. Don't know of any presents that he ever gave to Mrs. Hamilton; he gave her daughter a pair of earrings, and side combs, on condition of her getting the premium at school; and also gave her a Geography and Atlas. Don't recollect his ever presenting Mrs. Hamilton with a gold watch and gold rings. She went with her cousin Mary Thorn, and Mr. Clough accompanied them to Philadelphia, but did not return with them, but came back some time afterwards. At that time Mr. Clough had a contract on the Schuylkill. Mrs. Hamilton had a large silver watch, and she said she got it exchanged for a small gold one. I do not know that she exchanged watches with Clough or that he ever had the silver watch that belonged to Mrs. Hamilton. He had the same watch when he returned as when he went away. I don't know of his giving her any jewelry, or with having gone with her on any other journey. He once brought my mother a box of oranges, and was very attentive to her when she was sick. He left the house on Thursday week before my sister's death, professedly for New York, and parted on friendly terms with the family. He was absent about two weeks, and was thinner, and did not look so healthy when he returned as when he left. His kindness to the family appeared to be the same. After his return during the week he said he did not feel very well, and was occasionally confined to his bed, though he generally ate his meals regularly. He never complained of illness and expressed a wish to lie down until after his return from New York.

Elizabeth Longstreth. Am 13 years of age, am Mrs. Hamilton's sister; have lived a year or two with mother, Mrs. Longstreth, and Clough lived there also; I recollect Clough's leaving the last spring, and going to Rochester as he said, he being absent about a week, and returning on Thursday in April last. Saw him on Saturday morning, and did not see him again until after I returned home from school at 11 o'clock. I was then in the family room upstairs with Caroline, the little daughter of Mrs. Hamilton. The latter came upstairs, looked into the room and censured us for not wearing our aprons; Mrs. Hamilton then left the room, and soon after I heard a screaming, I stepped out, went into the entry, met the servant girl, Jane, who told me to open Clough's door; I tried once and failed, because I did not lift the

latch, but the second time I tried I succeeded, and both Clough and my sister Mary came out. I stepped back into a small room over the bar, and when I looked again they were both down on the floor; he was holding a dirk up over her; I took hold of his arm, pulled it back, and cried out, "Oh, don't," but he did not look up; I ran down to the bar room door, and called to Mr. Brown in the bar, and told him to go upstairs as somebody was killing my sister. They were lying on the floor in the entry, near the garret steps, and near the door of Clough's room. Did not see Clough strike her; and did not hear him or her say anything; he had hold of Mary.

Cross-examined. Clough had been on good terms with Mrs. Hamilton, and there was no unkindness between them; never knew of his giving her presents or going a journey with her. Sister's room was the family chamber, and Clough's apartment was next door but one to it, two or three steps higher. When Mrs. Hamilton was on the floor she struggled and tried to escape from him. He had hold round her waist with one of his hands when they were standing up, and she trying to get away. I saw no appearance of blood, but thought I saw him hold something up, but cannot tell what it was; when they were on the floor I thought it was a razor, it shined when they were in the room; she struggling to get out, and he, before her trying to hold her. I turned my face round, and when I looked again he had her down and was standing over her.

Jane Brown (a colored servant). Live with Mrs. Longstreth; work for my victuals and clothes. Clough lived at Mrs. Longstreth's all the time that I did. I saw Clough on Saturday come down to breakfast, and saw him afterwards in his own room. Mrs. Hamilton came upstairs, and she said it was 12 o'clock. I asked her if she had heard Mr. Clough call her, she said she did, and was going in to him. I was in my room next to the garret stairs, and next to Clough's. I heard some noise very soon after Mrs. Hamilton left me; it was in Mr. Clough's room. Elizabeth and myself both went to the room door, pushed, but did not raise the latch. I first thought the noise was like a dog's, and called to Elizabeth to come, for I thought there was a dog in Mr. Clough's room; we raised the latch, the second time we pushed, it opened, and I saw Mr. Clough put a dirk into Mrs. Hamilton; he got the point in as far as it would go, and tried to get the handle in; they were standing on the floor right against the door; I did not hear him strike but once; he had one hand round her waist, and the dirk in the other, while in the room. When I first saw her come out of the room, the dirk was in her; I saw them also in the entry, she lying down and struggling to get away from him, and he over her; they walked out of the room, he having hold of her all the time.

Cross-examined. I don't know how old I am. When Clough called for Mrs. Hamilton he said, "Mrs. Hamilton, Mrs. Hamilton, will you please to come here a minute." I saw her go into his room. Saw a little of the blade of the dagger, which I never saw before. Don't

know what kind of a blade or handle it had. Never saw any dagger before. Elizabeth and myself both stood near the door till we both saw the dagger's blade, because he pulled it out of her, and stuck it in another place again. We did not know what it was then, but Elizabeth said it was a razor; saw it afterwards when I followed Amy upstairs; she said it was a dagger.

Amy Wright. Lived at Mrs. Longstreth's at the time of Mrs. Hamilton's death, which was 6th April; saw Mrs. Hamilton after breakfast, when I was upstairs making the beds, in the front part of the house. She came to me with a cloak in her hand, and said, "Here, Amy, if I should not be here next week, take care of this cloak, there is a lady who left it here, and who would likely call for it." I saw her again about 11 o'clock; Mrs. Longstreth had got some new bureaus, and Mrs. Hamilton said she would have part of them for her own use. Heard something like a child cry and thought it was one of the children; then heard it louder and louder; ran up and stood on the landing of the steps; saw Clough and Mrs. Hamilton standing in Clough's door. He had one arm (his left) around her; she appeared to be endeavoring to get away from him. He looked at me so wicked that it frightened me, and I went down. I waved my hands and said to Mr. Brown and Mr. Ralph Titus, at the bar-room door, I beg you to come upstairs, and see what is the matter. I then went down to the kitchen door, and then returned upstairs and stood on the landing, and Mrs. Hamilton, coming down the platform, said, "Oh! I am done," and her mouth was all a gore of blood. Her mother, Mrs. Longstreth, met her in a lower entry, about half way of its length, opposite the room door, where Mrs. Hamilton exclaimed, "Oh! mother, mother, I screamed, and I screamed, and why did you not come and help me?" As she uttered this she fell leaning on her mother's shoulders. I returned into the kitchen, and did not see her again until half an hour, when she was laid out on the settee.

Cross-examined. When I came to live with Mrs. Longstreth, I found Mr. Clough there. He was on the kindest terms with Mrs. Hamilton and all the family. For some days before the murder he did not appear to be as lively as he had been.

June 1.

Elizabeth Longstreth. Am the mother of Mrs. Hamilton, the deceased. I reside at Bordentown, where I have kept a public house two years. The prisoner came there in June, 1831. It has been his home, but he has not been there all the time. He left my house last spring, and I understood he went to New York, whence he returned on the 4th April last, and recommenced boarding. He ate breakfast at my table on the Saturday after his return (the 6th April) in company with Mrs. Hamilton, Mary Imlay, and several gentlemen boarders. Do not recollect to have seen the prisoner after breakfast until after the fatal occurrence. Mrs. Hamilton was all the morning in the front parlor with her sister and the mantaumaker. I observed to her that I felt very unwell, and

she advised me to recline on the sofa; said she would send me a pillow, and attend to the dinner herself, and she then left the room. She sent me a pillow by her little daughter, on which I rested my head. In six or seven minutes thereafter, my daughter Elizabeth came to the door screaming dreadfully, but I could not understand what she said except the words, "Go to my sister Mary." I immediately ran, and when I got to the door of the frame house back, I saw Mrs. Hamilton coming with her hair dishevelled and hands upraised, and waving to and fro. She came immediately to me, and exclaimed, "Why did you not come? I screamed and screamed, and Clough has murdered me!" I asked her what for, and she answered, "Because I would not say that I would have him; and I could not, mother, I could not." I asked her where she was; she said, "In his room; he sent for me, and he has killed me!" I discovered that she was leaning, as if about to fall, and I took her in my arms, and led her into a small room adjacent, to lay her on the settee, which she did not reach, but fell, exclaiming, "Oh! mother, mother, I must die! I must die!" and the blood gushed out of her mouth, when they took me from her. When I first saw her, she was about half way down the stairs, coming down.

Cross-examined. Did not know Mr. Clough before he came to live at my house in June, 1831. While he was there, we lived in entire harmony together; he was a very pleasant boarder, and respected by all the family. Believe he would have been willing to have paid particular attention to Mrs. Hamilton, but she was not willing to receive it. I had frequent conversations with her on the subject of Clough's attentions. When absent he often wrote to her, although she requested him not to, and was angry when his letters were received, and threw them in the fire. Have heard her request him not to write to her. Do not know of any presents that she ever accepted of him, except an album, which he purchased in Philadelphia, and in which he got Mr. Worrall and Mr. Thomas to write, and which, after some solicitation, and asking my advice about it, she accepted. She refused a number of presents that he offered to her, among them his miniature and a large breastpin. She let Mr. Clough have the dirk last fall or summer, when he was employed on the Schuylkill, on his representing that he wanted one, as he was engaged in working with a rough set of people; it had belonged to her brother, and she had another which had belonged to her deceased husband.

He frequently did errands for me while boarding with me, and I respected him as a boarder very much. He was generally of a mild, placable disposition, except when angry, and was then very violent. The letters she received from him, I have frequently seen her tear up and throw into the fire. She sometimes handed them to me to read. Sometimes I read them, and sometimes I did not. Perhaps the letters did breathe affection to Mrs. Hamilton.

When he returned from his visit to New York, he said he had been sick in his absence.

He was dull, and looked sunburnt. After his return he laid down once or twice a day. He did not eat much on the morning of the murder, and I remarked to him that he had made a light breakfast. As to his mind I did not observe much difference, except that he was unusually dull, which I ascribed to the circumstance of his being unwell. When Mrs. Hamilton returned from Philadelphia, at the time Clough was also there, she had the small gold watch spoken of. It was a watch which Clough had had in his possession for some time. He frequently spoke to me about Mrs. Hamilton, but I always evaded the subject as much as possible. He said that he respected her very much and would go further to serve her than any other woman, but never told me that he loved her. Have no knowledge of any engagement between them, and know there was none. Know nothing about her ever going a sleighing with him, except once last winter, a year, when she was going to Trenton and thence to Princeton, to see her mother-in-law, when he came and crowded in the sleigh, and she told him there was no room for him, and if he went she must remain at home.

She did not return with him; nor did he bring her home. I never heard that he gave her any rings, or saw any in her possession. He gave her little daughter a pair of earrings, a pair of side-combs, and a geography and atlas, on condition of her obtaining a premium at school. Know nothing of Mrs. Hamilton ever having presented him with a lock of her hair; recollect Mr. Clough asking me one day if I thought Mrs. Hamilton was attached to anyone, and I replied that I thought she was not; he said he thought so too. When I saw Mrs. Hamilton first in such a fright, I thought perhaps he had killed himself, and that she had been in the chamber and had seen it; thought it might be so from some conversation she said she had had with him the evening before; but not from anything I saw myself.

Mr. Scott. You say, madam, that you thought perhaps that Mr. Clough had committed suicide, from some conversation you had had with your daughter concerning him, the evening before her death; now what were those conversations with your daughter that induced you to think so?

This question was objected to by the *counsel for the prisoner*, as illegal.

THE COURT ruled that the question was improper and illegal.

Joseph H. Brown. Tend bar for Mrs. Longstreth, where prisoner boarded. Previous to the murder went into the bar room and was conversing with two young men, viz.: Mr. Henry Sagan, and Mr. George Miller. The latter touched me on the arm and asked, "What noise is that?" I listened and said, "It is some of the girls, with some of their fun." The noise continuing, with a scuffle and screech, I immediately opened the door, and thought the noise proceeded from the garret of the frame part of the house, over the bar room, which I was in. I asked Miller and Sagan to follow me, and stepped on the foot of the stairs; the latter and myself, went up as fast as

we could, and Miller immediately behind us. After reaching the top step saw Mr. Clough and Mrs. Hamilton on the floor of the entry. Clough had Mrs. Hamilton down, and his left hand round her back. He was rather leaning over on his left side, and not entirely on the floor, with his feet drawn up in such a way, that he could recover himself at any time. Saw the handle of some instrument in his right hand, the blade of which was in her breast or side; nearest to the right side, and appeared to be in up to the guard; as he held it in his hand he gave it a prying motion laterally with the appearance of wishing to push it further in. I saw blood on and about her waist in several places, one in particular, where it appeared to be oozing or blubbering out. Immediately I found myself forced to give way, being crowded, and I gave way and stepped back so near the stairs, that I found it difficult to recover from falling off. The next I saw of Mrs. Hamilton, she was on the third step going downstairs with her hands uplifted, at the foot of which her mother met her; when she exclaimed, "Oh! mother! mother! why did you not come; I called, and called, and called, and Clough has killed me because I would not say that I would have him, and I could not mother, I could not —and I must die!" She was then taken by her mother into a small room opening near the foot of the staircase. I then returned upstairs, and entered the room of Clough. I saw him lying on the bed, looked at him a moment, walked out, and went to the spot where I first saw them lying, and there found puddles of blood on the floor; also found a silver thimble on the floor, picked it up, and found it crushed, and saw on it the name of Mrs. Hamilton. Picked up likewise her shoe, which I examined, and found it bloody inside. I then went downstairs to the room where Mrs. Hamilton was. Her arms were supported by a young man named Luke Doughton, assisted by a young lady. I then returned to Clough's room upstairs, saw him still lying on his bed, came out, and saw Mr. Sagan, who put a dirk in my hand, covered with blood up to the guard. He said to me, "Look here, what he did it with." Took the dirk, proceeded to the spot where I had seen them lying in the entry, and further along at the garret steps I saw and picked up fragments of side-combs, then turning towards the door occupied by the girls, I found a guard chain and watch key, and in stooping to pick them up, I discovered a bosom pin with the large central stone out. I took them up, and, particularly examining the bosom pin, discovered that it was pierced with some instrument having a sharp point, which had passed through it. I then went downstairs with the dirk in my hand to the door of the room where Mrs. Hamilton lay apparently lifeless, and whom they pronounced to be dead. Not more than ten minutes had elapsed from the time I first went up until this period. I then went into the bar. [The dirk, which had a blade about four inches long, a silver guard, and a white bone or ivory handle, was here exhibited to

witness. It was covered with blood up to the hilt, one of the guards was bloody and bent downwards, the point was bent as if it had come in contact with some hard or bony substance.] This is the dirk with which the fatal deed was done. After going to the bar, I locked up the dirk in a drawer. Saw no more of Clough until I saw him in the back yard, seated on a bench, back of the kitchen. He looked up and said, "How do you do, Mr. Brown." Saw him afterwards several times prior to the Sheriff's taking him away, but had no conversation with him.

Cross-examined. Clough appeared to me a mild and moderate man. When he first returned from New York, I welcomed him home, but observed no change in his appearance until the Friday antecedent to the transaction. I then thought he looked as if he was vexed, or mad, about something, I did not know what. Clough looked very pale and savage. I did not attempt to lay hold of him, or to speak to him or Mrs. Hamilton, or any person there, and I had not the presence of mind to interfere. I do not know that I was afraid, but I did not like to advance towards Clough when he was armed and I was not. Do not know that he made any effort to escape.

Arrangements were made soon after the murder, to surround the house, to prevent his jumping from the window and escaping. There were persons watching him in the back yard and in the garden until the sheriff came, near night, who took him into custody and carried him away to jail. A young man went up with a pistol into his room, soon after the murder, to prevent his escaping.

Henry Sagan. Was at Mrs. Longstreth's on the day of Mrs. Hamilton's death, and saw the prisoner there. Was in the bar room when I heard a noise, with Mr. Brown and Mr. Miller. The noise was screaming, and seemed the effect of trouble. I went upstairs with Brown and Miller, and saw Mrs. Hamilton lying on the floor, and Clough over her, not quite on the floor. She was on his left, his elbow on the floor under her. He held a dagger in his right hand, the blade was in her body, and he made three movements with it: they were quick and rapid plunges, during which the dagger was not drawn entirely out, but part of it still remaining in her body. I went downstairs, and armed myself with a club that I had perceived before I went up. As I approached the stairs near the bar room door, I heard Mrs. Hamilton halloo to her mother, crying out "Mother! mother," as she was coming down, and I sprung and caught her, and brought her down a few steps and delivered her into the hands of some persons near a side door, near the foot of the steps. I then asked for a pair of pistols, and called for a constable. The pistols were brought, and I took one. I then returned upstairs, and saw the dagger in the entry, lying on the right of the place where they had lain, and found Clough lying on the bed. I picked up the dagger and entered Clough's room. I then delivered the dagger to some person to take care of. It did not go out of the bar until it was put in the hand of some authority. Heard Clough say

(while engaged with Mrs. Hamilton on the floor of the entry) "Will you, will you?" Clough laid on the bed, with one arm extended, with his eyes closed. Did not speak to him, or he to me. Had the pistol in my hand. A physician came in with some remedy to eject the laudanum they supposed he had taken. (Dirk exhibited.) This is the dirk which I found in the entry. It was bloody, and the blood was not quite dry on it then. The guard was turned down and the point a little bent.

Cross-examined. Was not upstairs the first time more than two or three seconds. Did not observe any person there at the time, except Miller, Brown and myself, and we crowded Miller, in order to get downstairs. It was not the effect of fear of Clough, but he had a dagger, and I went down to get a club, which I had previously seen in the bar, to defend myself with. When I saw him in bed, he was partially undressed, his coat and stock were off. We went upstairs very fast, and we came down all together.

Elizabeth Applegate. Lived at Mrs. Longstreth's on the 6th of April last, and saw Mrs. Hamilton, that day about 12 o'clock, she came into the kitchen to me to inquire if dinner were ready. I told her it was nearly so. She then went upstairs, where I heard her speak to a servant about the dinner. Soon after this, say about 4 minutes, I was standing in the inside kitchen door, and heard her halloo—the noise she made was loud, and seemed to indicate being in trouble. She halloed "Oh!" several times. I next saw Mrs. Hamilton coming down the stairs exclaiming, "Oh! Clough has killed me!" I saw her when she met her mother about half way along the entry where she fell into her arms and exclaimed, "Oh! Mother, Mother, I screamed and screamed, and why did you not come and help me! and you did not come." She was then taken into the sitting room, but by whom I cannot tell. I act as cook in the family. Did not hear Mr. Clough call to Mrs. Hamilton. Mr. Clough did not appear to be very well for several days. His conduct was generally mild and kind.

Hannah Herbert. Was at Mrs. Longstreth's on the 6th of April last, after the death of Mrs. Hamilton. I took off the clothes she had on when she died, left them on the floor of the room, and then I laid her out. [On being directed to do so, she then opened a trunk and took out a black dress and corsets, which Mrs. Hamilton had on when she died.] These I took off her before I laid her out. [The dress contained seven holes, from a half to three-fourths of an inch in length, in the part that covered the left breast presenting the appearance of having been pierced with an instrument not sharp, and of the size of a dagger blade. The corsets were also pierced in a similar manner, and dyed with blood in the part that covered the breast.] These holes were in those garments when I took them off her. The corsets could not be unlaced, and the cords were cut with a knife. She had one shoe on, and one off. There were wounds in the body corresponding with the holes in the dress, and blood and other matter were oozing from them.

Dr. Joseph H. Cook. I am a physician. I was at the house of Mrs. Longstreth about the time of Mrs. Hamilton's death. Examined the body, assisted by Dr. Duer, and discovered ten deep wounds in the body. I introduced the probe into one which had penetrated to the bone of the left arm. The second had struck the shoulder blade, and also penetrated to the bone. The third had struck and fractured the seventh rib and completely broken it. The remaining seven had penetrated the chest, between the third and sixth ribs. On opening the chest, it was ascertained that seven of the wounds had penetrated the left lung; three out of the seven had gone through the lung and penetrated the left ventricle of the heart. Several smaller punctures were discovered on her body, one of which, an inch long, appeared as if the instrument had slipped or glanced; and there were four or five, apparently caused by the same instrument, which had penetrated only a short distance. The left cavity of the chest was filled with blood. Any one of the three wounds that touched the heart, must have produced death. The one which pierced the large artery, which takes the blood from the heart, and circulates it through the system, was inevitably fatal; and those in the lungs might have, and most probably would have, proved fatal. Have no doubt whatever that the wounds were the cause of her death. A person could walk as far as she did after being wounded in the heart, owing to the smallness of the orifice, which would not permit the blood to escape; and her dress also would intercept its flow. The heart was not taken out, but carefully examined. She would be able to speak after being wounded in the heart, and it is a common occurrence in mortal wounds. She would retain her mental faculties until life was extinct.

Cross-examined. If a person had the lungs perforated in three or four places, still the voice would be retained for a short time, though it would be much weakened. In this case one lung was left untouched and sound.

Dr. George S. Duer. I was present with Dr. Cook at the examination of Mrs. Hamilton's body. When I saw her she was lying on a settee, on her back, and was dead. There was one gash in the left arm, which reached to the bone, and two punctures through the skin. There was one on the point of the shoulder blade, which went to the bone. The seventh or last true rib was broken about its middle, being fractured entirely off, and the outward integument entirely separated from it. With the probe we then examined seven wounds between the third and sixth ribs, and laid open the cavity of the chest. The most of these admitted the whole length of the probe, which was four or five inches in length; two of them did not admit it above two inches. We found seven wounds in the lungs and three in the heart. Three of the ten had entered into the cavity in the left side; all were in the left side and in the left lung. (The dirk was here shown.) The wounds were as deep as the length of the instrument, and the probe was as long; it would require the length of this up to the hilt to penetrate so deep; four of

them were as deep as this is long. I do not entertain a doubt that either of them might have proved fatal; and I have no hesitation in ascribing her death to the wounds she received, and to the loss of blood directly from the heart.

Cross-examined. There were seven wounds in the chest, and three of the seven in the heart. There were seven external punctures and ten internal ones. There were something like thirteen or fourteen punctures altogether, and several abrasions besides. By internal punctures I mean those that have gone through the lungs without exhibiting corresponding external wounds. There is not the least doubt that each wound would produce death; one would not, however, let off the blood, while three would. It is possible to sustain the voice with seven wounds in the lungs; they would not stop the voice at once.

Luke Doughton. Was at Mrs. Longstreth's on the day of Mrs. Hamilton's death. Had been boarding there for about two weeks, and was sitting in the room reading when I heard the scream of a lady in the upper part of the house, appearing to be in agony, crying, "Oh! mother, mother." Thought it might come from some of the children receiving a correction from a parent. I then saw three young gentlemen, Brown, Miller and Sagan, run upstairs out of the bar room in a great hurry, and I threw down my book and followed them. When I got two-thirds of the way up the stairs, Sagan called out for a pair of pistols; I went and told the family in the brick house that there was something wrong in the other part of the house. I went into my bedroom, No. 1, and got a pair of pistols, and gave them to Sagan, as he requested. I came down and found Mrs. Hamilton in the arms of her mother. Her mother took her into a little dining room opposite to the bar room. After Mrs. Hamilton had been in her mother's arms about two minutes, I took Mrs. Longstreth's place, fearing that she would go frantic. I held her about five minutes, when she expired.

I asked Mrs. Hamilton once if she ever intended to marry Clough, she answered, "No." I asked her why; she said, "for a very good reason, because she did not love him." I think this was on Friday, the 5th, before noon; I was induced to ask her this question because it was a common report about Bordentown that she was going to marry him. Clough was polite to Mrs. Hamilton, but not more so I think than other persons; I think I was as polite to her as he was; we were all as attentive as is common, and I cannot say but that our attentions were all received as well as his; Clough was in the room with Mrs. Hamilton more than the rest of the boarders.

George Miller. Was at the house of Mrs. Longstreth on the 6th of April last. We were in the bar with Mr. Brown, the barkeeper, when we heard a screaming, seemingly upstairs, and we ran up, Brown and Sagan before me; I reached the top when they had turned and were coming down; I asked Sagan what was the matter; he returned no answer, and ran downstairs, as I did also; I went out and returned and found Mrs. Hamilton

leaning against the wall nearly opposite a door that opens into the bar room; Mrs. Longstreth was with her; Mrs. Hamilton was looking her mother directly in the face, and had her eyes fixed upon her; think Mrs. Longstreth supported Mrs. Hamilton into the room, half across which she sunk into her mother's arms; Mr. Doughton relieved Mrs. Longstreth, and took care of Mrs. Hamilton; I remained in the room until she died, from 7 to 10 minutes after she entered it.

Ann Reeves. Remember the day of Mrs. Hamilton's death; I was in my own house, when I heard the noise and disturbance. Our houses are about eight feet apart, an alley between. My daughter and myself went into Mrs. Longstreth's house, and into the room where Mrs. Hamilton was, downstairs, where we found her sitting on the floor, in her mother's arms, and the latter sitting on the settee. My daughter and a gentleman, named Doughton, took her out of her mother's arms, and Mrs. Longstreth and myself went into the front part of the house, where I remained with her; and while we were there, Mrs. Hamilton died; by that time the room was crowded with persons. When I first saw Clough, he was sitting down in the yard. Mrs. Longstreth said, she wished to see him, and that if he had his proper senses, he would know her voice and notice her. After a few words, she also said she supposed his neck must pay for it. I answered that it ought to. Clough then turned his head round, and looking at me, said, I am well aware of that. We then went into the the house. Next I saw of him he was walking in the back yard, but I did not speak to him.

Jonas Betchtel. Was at home at work, when I heard the scream of persons; it was not a clear, but a smothered scream; I knew it was in the back part of Mrs. Longstreth's house. I left my work and went into the house. Met Mrs. Longstreth at the back door. Saw Mrs. Hamilton entirely down, off the step, on the entry floor. I saw some blood coming out of her mouth, her hair was disheveled and flying over her face Heard her say that Clough had killed her. Her mother said, "Where was it?" She answered, "In his room." Her mother said, "My dear, how came you there?" She answered that Clough had called her. Her mother had her in her arms, and she was leaning on her. I then went up into Clough's room and found him lying on his back in bed, where were several persons. Clough's eyes were partly shut; he groaned twice, and asked if Mrs. Hamilton was dead. He then began to converse with Mr. Shinn. Clough's language was, "Is she dead?" Clough then began to state where his mother lived, and gave his miniature to send to her. Mr. Shinn was writing down with a pencil what he said, and I then turning round to leave the room, picked up two or three pieces of side-comb near the foot of his bed. I then went into the entry, picked up some more side-comb, and a watch-guard with a ring and key attached thereto, and a breast-pin. I returned to Clough's room, and placed these articles in the drawer of a table, which stood open; considering, however, that they were not his, I took them out again, and laid them on a

bandbox on some shelves at the foot of the entry. I then found her shoe, with some blood in, and a spot of blood on the floor near the shoe. It was the opinion of all who were present that Clough was dying at the time; the medicine was given to eject the laudanum, and save his life. I returned downstairs, and the next thing I saw was two men carrying him. They took him towards the front street, and then to the yard, where they led him about, as the opinion was that he was dying, and he was limber in every joint. One of the men shook him about pretty lively, and after that he walked. I then saw some persons leading Clough through the garden, and near a building, where he threw from his stomach a quantity of matter that resembled water, without any appearance of medicine or laudanum.

William Reeves. I was at Mrs. Longstreth's on the day of the death of Mrs. Hamilton. I went there from Bechtel's yard, on hearing screams. They at first appeared like the screams of a child, but continuing, I jumped over the fence, and entered Mrs. Longstreth's kitchen where I found all the girls screaming. Inquired what the matter was, and they said that Clough had murdered Mrs. Hamilton. Went into the entry, near the foot of the staircase, and saw Mrs. Hamilton sitting on the carpet, supported by Luke Doughton, and the blood issuing from each corner of her mouth, and also from her side, just above the belt. I asked where he was, and was answered by someone, that he was getting out of the back part of the house. I then saw Sagan with two pistols in his hand; took one and ran out to the back part of the house; saw several men; re-entered the house and went upstairs, where I saw Mr. Shinn, who had just entered Clough's room; Shinn caught hold of both Clough's wrists; I went to the bedside and Shinn yielded one of Clough's wrists to me, I took hold of it. Clough asked, "Is she dead—is she dead?" Skinner said she was. Clough then said, "Lord have mercy on my soul!" He then told Shinn to take his miniature and send it to his mother, which was in the bureau at the foot of the bed. Shinn inquired where his mother was. Clough answered in Orleans county, New York. Shinn then asked his mother's name, and he answered that it was Johanna Clough, which Shinn noted with a pencil on paper, putting the miniature and the paper in his pocket. Shinn said he was not so far gone but that he might be brought to, after feeling of his pulse, and sent for some medicine for him to take, which he did not wish to, shook his head, and kept his mouth shut. At Shinn's instance I then took hold of his nose, his mouth was forced open, and most of the medicine was forced down him. He then wished to be carried downstairs; I took hold of one side of him, and we carried him down.

While we were walking him about, he again asked if Mrs. Hamilton was dead—I told him she was. He then asked if she spoke after she was stabbed. I told him she did. He then inquired what she said. I answered him that she told her mother the cause of his killing her; and that she declared to her mother, that it was because she would not

marry him. He said it was not so. I told him then, that it could not be possible that a woman would assert a falsehood in her last dying words. He said that nothing of the kind had passed between them. George Clift, who also had hold of him, then asked him how, in the name of God, he came to do it? He replied, that he would tell that at some future time. I then told him to look at the blood on his hand, as it was bloody both inside and outside. He then extended his right arm, and said, "Reeves, that is an honorable arm," which expression he repeated. I asked him if he was sensible of what he had been doing. He said he was perfectly aware of what he had been doing, and expected to suffer by the laws of his country. We walked him about and then took him into the yard. Soon after the Sheriff arrived, of which I informed him, and that he would soon have to go. He then inquired what kind of accommodations he would have in prison, and whether he would have anything but straw to sleep on, which I said I could not tell Soon after Mrs. Longstreth came out with Mrs. Reeves. Said he was a poor, miserable wretch, and that his neck would have to pay for it. Clough took no notice of what Mrs. Longstreth said, but when Mrs. Reeves said that his neck ought to pay for it, he rolled up his eyes towards her and said, "Madam, I am perfectly aware of all that."

When we wanted to give Clough more medicine and warm water, in order to throw up the laudanum, after walking him about some time, he said it was of no use, as he had not so much laudanum in him as we thought he had, and not enough to kill or to injure him.

Joseph W. Allen. Saw Clough in the yard about 4 o'clock; he was talking with Dr. Cook; he asked me if Mr. Thompson had heard of the affair; I answered yes; I told him he had got himself in a bad scrape, and it would certainly cost him his life; he said he little thought in the morning that he could not control his passions better; but that he had cause. He then asked me if I thought money, honor, character, or credit would not save him. I told him his character was gone, that there was but little chance for him. He then asked me where Mrs. Hamilton lay, if she was dead, and if he would be permitted to see her? I told him he would not. He said he felt very bad from the effects of the laudanum.

John McKnight. Was at Mrs. Longstreth's a little after 12 o'clock on the day of Mrs. Hamilton's death. She was sitting on the floor, supported by Miss Reeves and Mr. Doughton. She appeared to be drawing her last breath; blood was coming from her mouth and side, and blood was also on her stocking. Coming out I saw a number of men and requested them to see that no one escaped from the house. Mrs. Longstreth soon had hold of me inquiring what she must do. She asked me if her daughter must die, and I told her I thought she must. I left her then in the care of some females; I went upstairs, and saw Clough lying on the bed, and Mr. Shinn endeavoring to administer an emetic to him, as he had taken laudanum. Afterward in the yard he said something which I did not understand until he used

the word "causes." They walked with him to the garden fence; I requested the men who had him to stand a little back. He writhed and said, "A man must have strong causes to bring his mind to commit such an act." He put his hand in his pantaloons pocket and said he had money. He then asked me if she was really dead; I told him she must be quite dead, and he shed tears. He asked if I thought that money would be of any service to him. I told him he might possibly want counsel. He asked me whom he should get; I named no person; and I told him he had committed a horrible act, and that he had better not assign any other causes than had gone to the world, or there would be less sympathy for him. He asked me what were the causes; I told him that I had heard from Mrs. Longstreth that he did the deed because Mrs. Hamilton would not consent to marry him. He wrung his hands and said, that she ought not to say so. I asked him how much laudanum he had taken? He said nearly one ounce, but it had no effect on him then. I asked him how many times he had stabbed her. He said seven times. When he asked if she was really dead, he said it must be so, for I was calm when I did it.

June 4.

John McKnight. (*Cross-examination* continued.) Clough mentioned to me that he had been intimate with Mrs. Hamilton and was so soon after she became a widow. He said that he had visited all or most of her friends in Philadelphia with her. He asked me if money would be of any use. I told him I thought very little. He said he was willing to submit to the laws, and be hung if it was thought right.

Joshua H. Follinshead, Sheriff. I saw the prisoner on the 6th April, in the back yard of Mrs. Longstreth's house. He sat between Mr. Reeves and Mr. Clift. Had very little conversation with him there. Brought him from Bordentown to this place in company with Mr. Cannon, Mr. Harrison and Mr. Brown, who aided me. On the road he mentioned something concerning the affair, and said that he hoped he had taken innocent blood, but feared he had not. Before we started some person asked him what he thought would become of him. He answered that he was aware of all the consequences that might follow. He did not mention to me the state of his mind at the time of his commission of the crime.

Willet N. Harrison. Saw the prisoner at Mrs. Longstreth's the day he was brought to prison. He was in the yard but I had no conversation with him there. I rode in the same carriage with him to Mount Holly, where he was committed to prison. I do not think the subject of the murder was spoken of at all, during the journey. He made some few remarks, saying that the night before, at the same hour, himself and Mrs. Longstreth's family were pleasantly situated together, and that he had no more idea of committing this deed, than anyone in the barouche. He also said, I suppose it will be the last time I shall travel this road, and remarked upon the beauty of the fields and of the country. He appeared very much depressed and conversed but little; when he

did, his conversation was connected, but he appeared to be in great agony of mind at times.

John B. Shinn. Was at Mrs. Longstreth's on the day of Mrs. Hamilton's death; she was in a small sitting room nearly opposite the bar room, in a sitting posture on the floor, about the middle of the room, and supported by Mrs. Reeves and someone else; she was about drawing her last breath. Went to Clough's room, and found him in his bed. I asked Clough how it was possible for him to commit such an act? He asked me to come in. I asked what he wanted. He answered, "Come in and hear the words of a dying man." While I was yet at the door he asked, "Is she dead?" I told him she was. He then put his left hand on his breast and said, "The Lord have mercy on my soul." I went into the room and took hold of each of his wrists; he then told me that in the drawer of the table of the room I would find a miniature; to take it and send it and write to his mother. I got the miniature out of the drawer; I asked him what made him think he would die so soon, and he pointed to a stand that stood in the corner of the room. I saw a tumbler on the stand and in it an ounce phial which had contained laudanum. I then got some tartar emetic from my shop, mixed and offered it to him. As he refused to take it by compressing his lips, I proposed to make him take it, and several of the bystanders took hold of, and held him and made him take it, which he did, spilling about one-half of it. He was then taken down into the yard, the men about half carrying and half dragging him, he refusing to walk. I gave him in the yard five grains more of the emetic, and then after some time an additional five grains. I met Dr. Milnor, and he told me if it had not operated to give him ten grains of sulphate of zinc, which I got and gave him. He was then moved about. Dr. Duer advised giving him, as the other did not operate, ten grains of sulphate of copper in two doses, but before it was administered the former emetics had operated. Saw nothing more of him until the Sheriff had him in custody.

WITNESSES FOR THE DEFENSE

Charles L. Bartlett. Reside at Princeton, N. J.; was acquainted with Mr. Clough from a child; knew him first at Unity, in New Hampshire. He resided there with his father. Knew the members of that family well. The prisoner had a brother Benjamin, one named Jeremiah, and another Westley, these are all I recollect. Was a schoolmate of Joel Clough; his father was a farmer. Joel was a bright, active boy at school, very mild, and of a warm temperament. Knew Benjamin. Have heard it said that he was at times deranged. I knew his cousins. Miss Mann was one of them. She was a long time deranged, or, as the people then said, "bewitched." Am connected with the Theological Seminary at Princeton, of which I am a student. I am well acquainted with the family of Clough. It is very respectable.

George Law. Live in Easton, Pennsylvania; became acquainted with the prisoner in November, 1829, at Easton. He had contracted for work in New Jersey, on the Morris Canal, and wished to have a conversation with me, on the subject of mechanism. His general character was very good. He was an industrious, honest, sober man and of a very mild disposition. It is customary for contractors, to carry weapons of defense. It became necessary for me on account of the character of the men we have to do business with, who are disorderly. Have not been much with Clough since 1830.

Henry J. Pyle. Became acquainted with the prisoner about twelve months since, at Mrs. Longstreth's where I was boarding two or three weeks with my wife. Thought Clough was attached to Mrs. Hamilton, as he always appeared to wish to be where she was. I have seen them walk together. Saw Clough at my house in Philadelphia. He was there also with Mrs. Hamilton. Mr. Clough, and myself and wife, went to the theater. The attentions Clough paid to Mrs. Hamilton were kindly received, but much more kindly at some times than others. After going to the theater, we all went to my house, between 12 and 1 o'clock in the morning, and they stayed nearly an hour, when Mr. Clough went with her from my house, to where she stayed. I have frequently conversed with Mrs. Hamilton about being married to Clough, and about three weeks before her death I had the last conversation with her upon the subject, when I requested that I might be groomsman when she married Mr. Clough. She laughed and told me I should be groomsman when she married him. Mr. Clough presented her with an album. I asked her if the gold watch she wore did not once belong to Mr. Clough; she said it did, and that it was the one he used to wear. I told her that Clough thought a great deal of her. She said "she hoped he did and everybody else."

Cross-examined. All of us have rode out together, but never saw Mrs. Hamilton and Mr. Clough ride out alone. We started from Bordentown, altogether once, and I believe twice. Have not made nor offered bets upon the result of the trial. Mr. Clough asked me to see about his having counsel, and I promised it. I have not made any attempt to speak to the jury about this trial. I did not know any of them, and I did not say that the constable was too quick for me. I have never said that Clough and Mrs. Hamilton stayed at my house all night, nor that they sat up all night. Have never heard Mrs. Hamilton intimate that his attentions were disagreeable.

James Wallace. I have known the prisoner since September, 1829. He was doing contract work, and had a sub-contract under me on the Morris Canal. Inquired into his mechanical and moral character, and found it to be good. I thought him more than ordinarily mild and forbearing. I saw him last of March or beginning of April last; I observed a change in him; he showed a disposition to drink more than before, and to press me to drink also. His mind appeared to me to be rather unsteady. We left Albany the Sunday before the 6th of April;

we drank two or three times at the bar in the afternoon; he wanted to drink every eight or ten minutes; I told him he must be beside himself, for it is not more than five minutes since you drank. When I was going to bed he pressed me to take a glass of whisky punch; I refused, and putting my hand upon his collar, said, "Mr. Clough, I don't see what the devil has got into you, you are more like a crazy man than anything else." He said, "Oh! never mind, I am so glad to see you." He did not seem natural to me, and I could not tell why. He looked fatigued. He was dull and stupid, and seemed to be a different man from what he was before. Clough was to take charge of my contract, if I made it. I thought he had become intemperate, or that something was the matter with him, and I abandoned the idea, and returned home. I left him in New York on the dock or boat, just about as I found him, except that he shed tears.

Cross-examined. We arrived in New York on Monday, and same day I went to Burlington. Went back on Wednesday, and found him in the custody of an officer, on a charge of taking some jewelry from a girl the Thursday evening before. I asked him how he came to get into such an affair; he said he saw a girl in the theater, hired a carriage, and took her home. She jilted him. He took the jewels, cleared the house, absconded, and went to Albany.

Mrs. Longstreth. Have seen letters, or a part of them, which Clough wrote to her, in Mrs. Hamilton's possession; these letters were returned to him a few weeks before the catastrophe. Saw Clough a few minutes afterwards. Clough stated in his interview with me that he had given up all hope of gaining her affections, had demanded his letters, and they had been returned to him. He respected the family, and ever should. I did not tell him that my daughter had made to me any communication concerning him. After the letters were returned to him, I understood that from that time his attentions would cease. He wished her to go a sleighing with him; she refused, and went with others. He was much affected at this. They disputed pretty loud, and he was very angry. She told him it was nothing to him where she went or with whom she rode; he had nothing to do with it. I do not recollect that he made any reply. I recollect there was a baptism, and she walked with him there, and returned with Mr. Lippincott; at which he was offended, and said some ill-natured things. When Clough first came to my house, he was mild and pleasant; towards the latter part of the time, I saw him much out of humor, and he talked very cross. Was very angry one day with Mr. Wells, and if Wells had not explained, or been humble, or made acknowledgements, Clough would have killed him.

June 5.

Arthur Stewart. I was acquainted with Clough for about two years when he lived in Bordentown. Never knew of any particular intercourse between Clough and Mrs. Hamilton, nor observed any unusual act of kindness or attention between

her and him. I observed those of an opposite character.

Lee Wells. Had an interview with Clough in the spring of 1832. He wished to know my intentions in relation to Mrs. Hamilton. I told him I must know his right to inquire. He said he wished to know my intentions with Mrs. Hamilton and whether any engagement had been made. I told him none. Previous to this he became very angry, and said, "Wells, you must discontinue your attentions to Mrs. Hamilton, or else you or I must die."

Cross-examined. Clough asked me if I entertained honorable intentions towards Mrs. Hamilton. I told him I did. Clough's attentions to Mrs. Hamilton were more than those of other persons. When I first boarded there they appeared disagreeable to Mrs. Hamilton, but a short time before I left, she was more free in conversing with him than she was previously. I observed the change; it was no more than it ought to be to a boarder and a friend. I did not think Mr. Clough a successful rival of mine. My attentions ceased when I left there on 1st April, 1832. We separated with a good understanding. Heard of reports about Clough's marriage with Mrs. Hamilton, when I was in Bordentown. May have asked Mrs. Hamilton the question whether she preferred Clough to me. Have often spoken to Clough about Mrs. Hamilton, and have advised him more than once to discontinue his attentions. When I asked her whether she preferred Clough to me, she said Mr. Wells you know better yourself. I had frequent conversations with Mrs. Hamilton about Mr. Clough; and she wished me to tell Mr. Clough to discontinue his attentions, as they were very disagreeable to her. I told Clough of what she requested, and he answered that time would decide the case.

Charles J. Ihrie, Edward J. Dubarry, Humphrey P. McMyckle, William McKnight, Charles Green and *William Arnold* testified that they had known and observed the prisoner for years, that he was of good habits, of a mild and moderate disposition and that his character was good. On the other hand *John Hopkins* testified that his general character when he worked and did business with him was bad.

Mr. Hazlehurst for the prisoner read from a number of medical authorities on the subject of mental maladies: the predisposing causes of insanity and madness and melancholy.

Mr. Southard for the State cited "Russell on Crimes" as to the legal test of insanity and read extracts from it: and to quote the reporter's note of the trial, "the cause on the part of the prisoner, was summed up with great energy, eloquence, and zeal, by Messrs. *Hazlehurst* and *D. P. Brown*, the former in a speech of two, and the latter of more than three hours, in which every effort of reason, pathos, and argument, was used

to convince the jury of the insanity of the defendant, and to make an appeal to them of the justice of his acquittal, on the ground that he was at the time laboring under an aberration of mind. The cause, on behalf of the State, was summed up by Messrs. *Scott* and *Southard*, with that masterly eloquence, energy, power, and sublimity of reasoning and of pathos, for which they are so preëminently distinguished; the former in a speech of about two hours, and the latter concluding in a speech of about four hours, during the delivery of which, the question of the prisoner's insanity was met and overcome with skill, learning, law, and talent, which completely broke down this barrier of defense, and carried conviction to almost every mind that the murder was the effect of premeditated purpose, growing out of disappointed, unrequited and despised love, and jealousy, which prepared the prisoner's mind for the commission of the horrid crime. While delivering these powerful addresses to the Court and jury, the learned counsel were several times overcome with their own feelings so completely that tears denied their utterance, and which communicated to almost all around; the prisoner covering his face, and appearing to agonize to his very soul. Mr. *Southard* took the floor in reply to Mr. *Brown* at 6 o'clock in the evening, and would have brought this important trial to a close at that time had it not been for the unfortunate illness of one of the jury, who was taken out of the court-house three different times, but it was evident that he was too seriously indisposed to be able to sit out the argument, if it were to be finished that evening—and the COURT adjourned until eight o'clock the next morning, when Mr. *Southard* concluded his remarks."

June 6.

CHIEF JUSTICE HORNBLOWER: After a severe, close, and painful investigation of this cause, for several days, we have reached that point where the labors and responsibilities of counsel have terminated, and where it becomes my duty to explain to you the rules and principles of the law, so far as the guilt or innocence of the prisoner is connected with, or dependent upon, those rules and principles.

Soon the fate of the prisoner will be committed to your hands, and upon your verdict hangs the issue of life and death. His mortal, and so far as human actions can influence our future condition, it may be, his immortal and eternal destinies are to be irrevocably fixed by your decision. Not, gentlemen, that either you or the Court have any power, except incidentally, over the life or death of the prisoner. You and we are delegated with no such authority. We have been selected to perform another and specific, though I admit, a solemn duty, namely: to ascertain the guilt or innocence of the prisoner; and there our duties and our power terminate, so far as we are responsible. The law makes no appeal to our judgment, on the expediency of the punishment it annexes to crime; nor to our religious views or feelings, on the moral fitness or legality of that punishment. What follows our decision, whether it be innocent or guilty, is the act and judgment of the law, and not ours.

The privations and confinement you have so long and so patiently endured, the fixed and untiring attention you have paid to the evidence and the arguments of counsel, are, I am sure, a sufficient pledge to the country and to the prisoner, that your verdict, whatever it may be, will be the result of your cool and deliberate judgments—the honest convictions of your minds; the true answer of your consciences in the sight of God, and not the expression of prejudice or excitement, on the one hand, or of the unrestrained and controlling indulgence of sympathy and compassion, on the other.

There is danger, gentlemen, that the claims of justice may be overlooked and left to suffer, amidst the conflict of contending passions, alike honorable to our natures, and yet alike dangerous to our reason. The cry of murder—the death struggles of the expiring victim—the reeking dirk and the garments rolled in blood, are well calculated to rouse our feelings and fill our souls with a holy indignation against the perpetrator. Instinctively, almost, we wish to see the glittering sword of justice strike the avenging blow, and vindicate her cause. 'Tis right we thus should feel, and men we should not be, if we

could look, unmoved, on crime like that with which the prisoner stands charged. But we must guard against these emotions when we enter the sanctuary of justice, whether in character of judges or jurors. We are not, indeed, to banish them from our bosoms; but we must take care that we do not transfer our righteous indignation of the crime to the accused, and thus deny him the benefit of our sober reason and our powers of discrimination.

So, on the other hand, sympathy for the accused, tender and compassionate feelings towards a wretched, perhaps an innocent, or at least unfortunate, man, standing in the attitude of the prisoner at the bar, is a laudable, nay, an honorable attribute of our nature. But here again we must take care that we do not suffer our humanity to degenerate into weakness, and deny to justice and the majesty of the laws their just claims.

If, however, gentlemen, you err at all, let it, I pray you, be under the influence of the latter feelings; for it is the benignant spirit, as well as the language of our law, that many guilty had better escape than one innocent man be punished.

The prisoner stands before you charged with the crime of murder—murder committed on the person of Mrs. Mary W. Hamilton.

The crime of murder is committed, when a reasonable being kills with malice aforethought another reasonable being, in the peace of God and of the State. Your inquiries, therefore, will be in the order and as follows:—1. Was Mary Hamilton killed? 2. Was it done by the prisoner? 3. Was it done with malice aforethought?

The two first interrogatives involve nothing but pure and unmixed matters of fact, and to them the jury must respond; and that answer must, unhappily, in this case, be in the affirmative. Mrs. Hamilton was killed, and she was killed by the hand of the prisoner. I would, gentlemen, that you and we had room to doubt on this point. But we have all had exhibited to our view and to our ears, but too certain and too painful evidence of the fact. She was killed on the 6th

day of April last, in the house of her mother, by the hands of the prisoner. It is not denied by him, or by his counsel.

Nothing, then, remains to be answered but the third interrogative—"Did he do it, with malice aforethought?" Upon your answer to this question must depend the fate of the prisoner; and God grant, that I may be enabled rightly to understand and so to explain the law to you, that is involved in or connected with this question, that I may not be instrumental in doing injustice to the prisoner.

What then is meant by "malice aforethought?" It is a wicked and unlawful design or intention to do a wrong or injury to another; and whether that design or intention has its origin in a spirit of hatred and revenge to the person, or in the gratification of any other passion of the human mind, it is "malice aforethought." Nor is it necessary that it should have been a previous, deliberate and fixed purpose, to do the act; for malice is sometimes express or positively proved; and sometimes implied—that is, inferred or deduced from the circumstances attending the transaction. Malice is express, where a previous and deadly quarrel existed, and hatred ensued between the parties; or, where threats were made previous arrangements concerted, or the deceased waylaid. In the absence of such proof, it may be implied, from a variety of circumstances, and even from the deadly nature of the weapon made use of; and such was the instrument in this case. But then, the very fact, that malice aforethought must exist to constitute the crime, implies that the perpetrator must be a moral agent—a reasonable and accountable being.

Here probably lie the hopes of the prisoner and his counsel; and whether he was or was not such a moral agent, and such an accountable being at the conception and execution of this dreadful tragedy, is for you to determine.

It would seem indeed, as if none but a madman could have perpetrated such a deed as we have here exhibited in evidence. Who, we are ready to exclaim, but a maniac, an insane and deranged man could have imbued his hands in the blood of such a victim;—could have plunged the dagger into the

bosom of virtue, the breast of love itself, and let out the life streams of her in whose life and happiness his own was bound up in unconquerable affection? It is almost incredible. —Gentlemen, it is strong evidence of insanity. It is entitled to your consideration—let it have its weight; but it is my duty to add, it is not conclusive evidence of that sort of insanity which exculpates from accountability and guilt. Frenzy and passion are nearly allied to—nay, they are a partial insanity; but it is sometimes such an insanity as increases rather than diminishes moral turpitude—as proves its existence rather than its absence. Such, unhappily, is the depravity of human nature, that disappointed love, as well as disappointed avarice, or ambition sometimes urges on its victim to crimes of deepest die, to murder, and even to suicide, itself. But such aberration may be only the actings out of a selfish, depraved, and wicked heart; the gratification of a malignant and vindictive spirit, that has not moral courage or virtuous sensibility enough to survive or overcome a defeat, or the humiliating refusal of proffered love; it may be malice, in its deepest, darkest colors, and its most resentful, malignant, and deadliest form. Such is the strange and mysterious composition of our nature; so closely allied are our virtues and our vices; so easily does the former degenerate into the latter, or the latter assimilate themselves to, and assume the garb of the former, it is often difficult to determine where the one terminates, or the other commences. Such is the passion of love; it may be pure and virtuous, chaste in its conception, holy in its motives, honorable and disinterested in its object; it may seek exclusively and supremely the happiness of the person on whom it is fixed, regardless, in a measure, of its own welfare, except so far as it stands connected with the welfare of that person; it is then a noble and ennobling passion. But it is sometimes a vicious love; it is rather the burning lust of unhallowed and undisciplined passions, than the ardent flame of virtuous and sentimental affection; and when such is its character, it is not surprising, if unrequited and ungratified, it should turn to hatred and seek revenge.

I do no mean to intimate that such was the nature and character of the prisoner's attachment to the deceased. It may have been as pure and holy as ever glowed in the bosom of a mortal being. It may have burnt and blazed too strong for the physical powers of his mind to endure; and the lamp of reason itself may have gone out, or but glimmered in its socket, under the influence of its all-absorbing power; and if by such, or any other cause, the prisoner's mind had become unsettled or deranged;—if reason had been driven from its throne, he was a wretched, miserable, crazy man, but not a guilty one. And here, perhaps, I ought to be more specific as to what amounts to, or constitutes such a derangement, as exculpates from the imputation of guilt, and saves from the infliction of punishment.

It is a general rule, that all homicides—that is every killing of a person, is presumed to be malicious, and of course, murder, unless the contrary appears from circumstances of alleviation, excuse, or justification—and that it is incumbent on the prisoner to make out such circumstances to the satisfaction of the Court and jury, unless they sufficiently appear from the evidence and case made out on the part of the prosecution—or perhaps at most it is necessary for the State to show a homicide committed by defendant prima facie, clear of any alleviating, excusing, or justifying cause.

In the case now before the Court, as I have already remarked, the homicide is proved, and if not confessed, is not denied. The prisoner then is obnoxious to the charge, and liable to the dreadful consequences of murder, unless he can alleviate, excuse, or justify his conduct.

It is not necessary for me to enter into a specification of what constitutes an alleviation, excuse, or justification. The defendant has not attempted to alleviate, or to justify—but his defense is bottomed on a fact, which, if true, is an excuse. That fact is a state of mental alienation; and if such alienation did exist, it is an excuse. It does then rescue him from the charge of crime, and shield him against the punishment due to guilt.

But then it must be satisfactorily shown to the jury that he was in that unhappy and miserable condition; and at this point the difficulty meets us and presents two questions.

1st, What state, or degree of alienation of mind, constitutes an excusing insanity? and

2dly, Did such an insanity exist?

The first it is my duty to ascertain and declare; the second, it is your province to determine.

In ascertaining what degree of insanity will excuse, we may derive some assistance from the reason of the thing; from analogy to other cases, and from settled rules. Reason and good sense teaches us at once, that it is not every weakness, imperfection, or fallacy of the human mind, that puts an end to our free moral agency, and exonerates us from accountability; for in the true philosophy of mind in reference to moral actions, every departure from truth and virtue, is but an act of insainty; the manifestation of a disordered mind as well as a depraved heart.

In the case of children of tender years, of nine and ten years of age, who have been indicted, convicted, and executed for crime, the inquiry has not been, whether by premature maturity of intellect, they were capable of understanding and judging correctly, of the moral law, in all its bearings and relations upon themselves and others, but whether they had intelligence enough to know right from wrong, good from evil, or that they were committing a crime for which they deserved, or were liable to punishment. But without pursuing these remarks any farther, it is enough for me to say, that the ablest and most humane judges that ever adorned the judgment seat, have repeatedly decided that it is not necessary to render an act criminal and the perpetrator punishable, that every spark of reason should be extinct; that though it may glimmer in its socket, and give but an unsteady and doubtful light, yet if enough remains to show it was susceptible of feeling its legal and moral obligation, though not sufficiently strong and steady to discover them in all the bearings and obligations, yet he is responsible and punishable.

But, if there is an absence and destruction of the reasoning powers, a dark chaos of the mind, incapable of feeling the restraints of law, or of discriminating between right and wrong, or fitful and illusory phantoms of the brain, that presents things in a false light, or imposes upon the disordered intellect as realities, what has no existence in nature; such a mind, thus in ruins, has ceased to be accountable for its acts.

I do not mean to say that there must be a total and absolute extinction of the light of reason. If the prevailing character of the mind is insane; if only now and then it is pierced by a lucid ray; but its general character is disordered and chaotic, it would be dangerous, if not cruel, to convict and punish for a crime an individual thus already miserable and pitiable.

With these remarks, on the extent and degree of derangement necessary to exculpate a defendant, and referring you to the cases that have been read and commented on by counsel, I dismiss this branch of the subject.

With this explanation, your next inquiry will be—did such a state of mind exist?

In these investigations we can derive, after all, but little practical benefit from the learned and scientific works on medical jurisprudence. We know, for instance, that intemperance sometimes produces insanity, and insanity sometimes shows itself by intemperance. But the difficulty is to tell, which is the cause, and which is the effect; so in this case—whether a disordered intellect led him into the excesses he committed on board of the steam boat and in the city of New York, or whether those excesses were characteristic of the real moral feelings, that led him to the commission of this horrid deed, is a question that the casuistry of doctors can afford us but little help in solving.

After all, in their own language, it must depend upon the circumstances of the case.

It may be, gentlemen, you will find evidence enough of such an alienation of mind as I have described, and God grant that you may; for we would rather, infinitely rather, find him a maniac, than a murderer.

And here you will refer yourselves to the evidence. You will remember, and try to account for his altered looks, and the absence of his wonted cheerfulness, after his return from New York. He had left, it was thought, perhaps hoped, at least by the mother, never to return. But he came back. He came back pale and dull. Was it the paleness and dullness of a diseased body, a distracted and deranged mind? Was it the sad effects of his recent debauch and dissipation in the city of New York? If the latter, was that debauch, that disgusting conduct related by his friend Wallace, the actings out of an insane mind or a depraved heart? Was it the paleness of passion, the dull, gloomy and unsocial feelings of a heart bent on mischief? Had a fixed and settled purpose been formed in his bosom, to destroy the gem he could not make his own, or was he the unhappy victim of his ardent, but misplaced affection?

These, gentlemen, are questions to which you must respond; and if anything in the absence of full and satisfactory evidence of insanity, can save the prisoner, it may be found in the burning eloquence, and untiring efforts, the soul stirring appeals of his able and distinguished counsel; they have done their duty; and if the unhappy prisoner must pay, to injured justice, the forfeit of his life, his blood will not be found on any part of their professional garments.

And now let me beseech you, gentlemen, that nothing I have said, be understood by you, as intimating an opinion unfavorable to the prisoner. I have not intended, in reference to the great and material facts in the cause, to express any opinion either for or against him. My object has been, however unsuccessful the effort, so to conduct this trial, that if the prisoner is acquitted, public justice shall be satisfied—if condemned, he may die in peace with me, and have no occasion to occupy his last lingering reflections, with the thought that the Court has done him injustice. That such has been my object, I think I can confidently but reverently appeal to the Searcher of hearts.

To his guidance and direction, gentlemen, I fervently recommend you. Go to your chamber, and there in the fear of God, and as you expect to answer for the transactions of this day, at His bar, discharge your duty to the country, and to the prisoner; and may the Spirit of unerring wisdom, the God of mercy and of truth, preside over your deliberations, and conduct you to such results, that neither Justice nor Mercy shall have occasion to mourn or be offended.

THE VERDICT AND SENTENCE

The jury retired, and after an absence of about two hours, returned into court, with a verdict of GUILTY.

While delivering this verdict, several of the jury were dissolved in tears, and appeared to feel the effect of the high and solemn responsibility that they had discharged. The *prisoner*, on hearing his sentence, became much overcome by his emotions and feelings, and almost sunk under the contemplation of his condition. *Mr. Brown* gave notice of his intention to move for an arrest of judgment, founded on some supposed defects in the indictment, on which he wished a short time to bestow a critical examination, and for this purpose the prisoner was remanded, and the court adjourned to 5 o'clock. *Mr. Brown* having signified his intention of communicating in writing with the Court on the subject of his motion for arrest of judgment, and when the Court reassembled at the hour of five, information having been received from the CHIEF JUSTICE, that he did not consider such motion sustainable, the prisoner was placed at the bar. The *Attorney General* moved that sentence of death be pronounced upon the prisoner at the bar.

CHIEF JUSTICE HORNBLOWER. Joel Clough, have you any thing to say, why judgment of death should not be pronounced against you.

Clough. I have—and with uplifted hands I declare in the presence of the everliving God—I am innocent. There was an attachment between Mrs. Hamilton and myself, and we were at one time engaged. She broke it off. I settled up my

business, at her request and left the place. There has been much said here about my character, the most desperate part of which is the occurrence in New York. With regard to Mrs. Hamilton's character I have nothing to say. She was a virtuous and honorable woman, and I loved her. If there is virtue in the Catholic religion I am prepared. I hope Almighty God will have mercy on her soul. I fear she died unprepared. When I left New York my mind was greatly depressed. I threatened to take my own life, and she was aware of it. I went to bed that morning and made up my mind to take my life and sunk into a swoon, as near as I recollect. In this situation Mrs. Hamilton came to my room. I did not call her. She shut the door. I laid on my bed, with my face toward the wall. She said, "Clough, what is the matter." I said I felt very bad, and wished her to give me some laudanum. She asked me how much? I said, what you please. She gave me some, and said I must get up. There was a noise in the entry. I said, if you have anything to say to me, say it quickly. I put my hand in my pocket to get out my key to give her—I wished her to possess all that I had. She went out. I went to the door and saw Jane or someone in the entry. I pushed too the door. She peeped through. I was in the act of taking my own life. I had the dirk in my pocket. She came in. I closed the door. I told her I should take my life, and she interfered and put her hand on my shoulder. I told her to go out. I reflected a moment and after striking her one blow, why did I strike her eleven? Why did I not strike my own heart? I was very weak, and the dirk dropped out of my hand, and I could scarcely get to my bed. I was on the point of taking my own life. If she had stayed out of my room, she would have lived and I should have been in my grave. I feel I am entirely innocent of her blood, for I don't recollect what I did. I was lost at the time. I settled up my business, after our engagement was broken off, and went to New York and Albany and returned. I was not myself, and was on the eve of taking my own life. I never called her to my room. She came in voluntarily.

If my death is required, I am willing to suffer. It is not for myself. I do not fear death—I have already suffered death. The Honorable Jury have not been sufficiently enlightened on the subject. There are many things yet wrapped in darkness. I knew nothing of Mrs. Hamilton's coming to my room. There are things stated with regard to my character, while in Connecticut, which I feel it my duty to contradict. I was appointed, on recommendation of Mr. Mallary, of New York, superintendent on the Farmington acqueduct, where Hopkins was employed as engineer. I considered myself master of my trade; and I soon discovered that he was incompetent to take charge of a work of that magnitude. Under my influence, after a violent personal quarrel, he was removed from that part of the line, and always entertained animosity towards me, and thought when he saw me confined in this box, it was a proper time to show his hatred and malignity. I feel that I am not guilty. I do not fear death, but fear that I am not prepared.

The CHIEF JUSTICE. Joel Clough, after as full, fair and deliberate a trial as I have ever witnessed in the experience of thirty years' practice at the bar, you have been convicted of the murder of Mrs. Mary W. Hamilton. In the history of this trial you have had the benefits of able and distinguished counsel, and if you had been their brother instead of their client, the tender ties of such a connection could not have added to the untiring zeal, the laborious and honorable efforts, the exertion of professional talents, the thrilling and soul subduing eloquence with which you have been defended. The jury were literally of your own selection, you were not captious and troublesome in making that selection, but you did it with prudence and discretion, and not a juror was selected but in accordance with your own feelings. The counsel for the State conducted the cause with benignity and mercy,—but with those talents for which they are distinguished, and that firmness for which as men of virtue and of honor they dare not relax. Your triers, the jurors, have in the most patient and enduring manner submitted to almost unexampled

privations and confinement for the period of nearly eight days, until some or one of them at least almost sunk under the pressure of his confinement and his feelings, and by their fixed, solemn and patient attention to every word and suggestion must have given you the assurance that they desired not your blood, but most ardently and fervently desired to find you innocent, if that innocence could be found even in the negative virtue of a ruined and distracted mind; and as to the Court, it may not become me to speak—but I think in view of that bar, before which you must shortly appear, I can say for my brethren and myself, that we have endeavored so to regulate and control the trial, as to secure to you all the advantages that the fair and impartial administration of justice can extend to the deceased.

The final and the fatal result has been recorded, and that record speaks while mind and memory and judicial records last, and will continue to speak you Guilty, Guilty, Guilty—of the murder of Mary W. Hamilton, in manner and form as you stood charged by the Grand Jury of the county.

And who was Mary W. Hamilton? Was she your enemy? Had she done you wrong? Was it her crime that beauty had spread her charms and smiled forth in all the loveliness of virtue, in every feature of her countenance, in the delicacy and elegance of her form, in the chaste and winning manners of her life? And was it because you could not make such a prize your own, that you resolved in the madness of your heart, she should never live to bless another man or make him happy—as she had made the former and lamented husband of her first and earliest love? But I press the inquiry no further. You say you loved her—and yet, mysterious love—you seized the unsuspecting moment of her kind attentions, when sickness, feigned or real, we fear the former, drew her, at your request, with kind attentions to your chamber to administer to your comfort, you seized that moment to plant the fatal dagger in her bosom—perpetrated the horrid deed. She lived to say,—"Oh! mother, mother, I screamed, screamed, —you did not come, and Clough has killed me because I would

not marry him. I could not, mother—I could not, you know. —I must die, I must die!" But I forbear—I desire not to extract the dagger from her bosom and plant it in your own. I know your blood will not atone for hers. But I have said this much, that you may see and feel we have a just abhorrence of your crime, and to banish from your bosom all hope of a favorable interference by the Court, with that department of the government in which is lodged the pardoning power. Banish then, we intreat you, from your mind every hope and expectation—put out at once the faintest ray of hope that may penetrate into the darkest recesses of your cell, and prepare to meet your God!—The blood you shed was precious blood, but infinitely, infinitely more precious is that blood which was shed on Calvary; and on that and that alone we commend you to look for pardon and eternal life.

It remains only for us to pronounce the sentence of the Law—and it is considered and adjudged that you be taken from hence to the prison of this county from whence you came, and there be kept in close and secure custody until Friday, the 26th day of July next, between the hours of 11 o'clock in the morning and 3 o'clock in the afternoon, you be taken to the place of public execution and there be hanged by the neck until you are dead, and may the Almighty God have mercy on your soul!

HIS ESCAPE

A few weeks after his conviction, Clough was detected in attempting to break jail and transferred to a dungeon. Some time after he prevailed on the Sheriff to remove him, and was then placed upstairs, and, for better security, fastened by one foot, with a heavy chain to the floor. By means of a steel pen he separated a link, and accustomed himself to loosing his shackle and refitting it as convenience dictated, and as candles were allowed him, he had burned the window frame at the upper tenon, that it might be removed at pleasure. By removing the frame, an aperture of 6 by 16 was effected. On

Saturday night, July 20th, the Sheriff left Clough at 11 o'clock. Removing the shackle and frame, and stripping off every article of clothing, he made an attempt to press through, but failed. He then rubbed himself with soap, and after a tremendous effort, succeeded. Dressing himself he commenced scaling the wall. He gained the summit by boards found in the yard, and when there, descended again into the yard to lengthen the rope he had provided for letting himself down on the outer side. He thus wasted time and strength, and it was with the greatest difficulty and after giving up in despair, that he regained the top. It was now daylight, and steering for the woods in the direction of Philadelphia, secreted himself about three miles from there. Alarm was soon given, and many citizens armed themselves and commenced scouring the country. One individual passed within a few feet of him; but he was first observed by a colored man, who saw him come out in the evening to the wood pile. Word was speedily conveyed to the town, and many citizens repaired thither, occupying every avenue and by-way in that vicinity. About 10 o'clock he was seen by two of his pursuers. They knew him, and after interchanging a few words, seized him. He offered no resistance, but begged most pathetically. "You know, gentlemen," said he, "that I have worked hard for my life; do, for Heaven's sake, let me go." They were not to be moved from the strict line of duty, and being speedily joined by several associates, Clough was soon remanded to prison. Great rejoicing was manifested on his being arrested, which was proclaimed by long and repeated ringing of the court-house bell, firing of guns, etc. When Clough was recaptured he was taken to a house near by, to get something to eat—while eating supper, one who was most active in search of him, came in, and exclaimed, "Hallo! is this Clough?" Clough then looked up and replied, "Yes, that is my name." "Well, sir," said he, "I have been looking for you all day—where the devil have you been?" Clough remarked, "I have not the honor of your acquaintance; who are you, sir?" "I am the devil." Clough laid down his knife and fork, and looked very

significantly at him, and replied, "The scriptures tell us to despise the devil and his works."

HIS CONFESSION

Some days before his execution Clough wrote out the following confession which he delivered to his attorney, requesting them not to give it to the public until after he had been "laid in the silent tomb." "For," said he, "the finger of scorn will no longer be pointed at me and the opinion of the world will pass by my cold, stiffened corpse unheeded."

The subsequent facts connected with the history of my unfortunate life, are true, and are dictated with no other intention than to discharge from my mind all the facts, and give to the public the leading acts of my life, the motives and causes that impelled me to the commission of minor crimes, and also in regard to the great and awful crime, for which I am prepared to suffer the death that human laws and public justice requires.

I was born in Unity, county of Cheshire, state of New Hampshire, Nov. 24th, 1804—my father, mother, and the family generally, sustained a respectable station in society. I had four brothers and two sisters. I being the youngest of the family, more than ordinary pains was taken by my parents to instil into my mind proper principles, and furnish me with a suitable education. I was sent to school in New Hampshire, where I remained until my father sold his property in that part of the country, and removed to Rochester, in the state of New York. I was then, as near as I now can recollect, about 14 years of age. During this time, I am not aware of having been guilty of any improper acts, other than those that are generally connected with schoolboys of my age, except in the indulgence of a most vindictive passion. And here I will observe (and it gives me deep pain and anguish to make the remark, yet I do it for the benefit of those I leave behind) that this passion—this unhappy temper, has been the besetting sin of my life. I being the youngest child, I was gratified by my dear parents in all those indulgences that my boyhood could suggest. Yet it was sometimes the case, when my wishes were foiled, I would burst out in a most violent passion; and while in this rage and frenzy, using the most profane language, and even denouncing my parents in the most inhuman manner; they would, instead of chastening me in a proper manner, grant me my requests, and even hire me by presents to cease in my passion; and while at school, it was frequently the case that when my playmates and companions became victorious in the various games we were playing, I would fly into a rage, and threaten them in the most violent manner. There is one incident, however, that occurred while I was at school at Unity, which, although I was not the actual instrument, that committed the act, yet I was present

in the secret—indeed, I was indirectly instrumental. Near the schoolhouse lived an old Friend, who owned a fine apple orchard; myself and some few of the schoolboys would frequently repair there between school hours, and steal apples; upon one occasion, we were detected by the old gentleman, who made our parents and teacher acquainted with the fact, and the consequence was, that we received a severe flogging from the teacher, which my passion was illy calculated to brooke without entertaining feelings of revenge, and it was soon agreed amongst us (the larger taking the head of the business) that we would satisfy our revenge by burning down the old gentleman's barn, which was done soon after, about one o'clock at night, during a most violent thunder storm—which shielded us from all suspicion of the act, it being supposed to take fire by the lightning—nothing more was afterwards heard upon the subject, and, until this time, remained a secret.

My father remained in Rochester, but a short time, engaged in no particular business, when he purchased a farm in North Murray, Orleans county, about 30 miles west of Rochester—and here he removed with all his family—which I think was in the year 1817. My eldest brothers were kept to work on the farm, and I was sent to school, where I remained the greatest part of the time that my father lived—and was, as usual, indulged in all my foolish whims. While at school here I contracted a fondness for playing cards, for amusement; but it soon grew more fascinating, got a greater hold of me, and I could only find amusement in playing for money. I was pretty successful at first, and enticed deeply in the game, and frequently would lose all I had won, and more beside; and when that was the case, I was seen to get mad, and charge those that I had been playing with, with dishonesty, which would frequently create a fight, and then I would use anything that first came into my hands, club, knife, or anything else; at this time I was but 16 years old. When I could not get money honestly to play cards with, I would get it dishonestly. I have frequently got up at midnight, went to my father's clothes, taken the key from his pocket, got to the desk and take out two or three dollars. I was, however, soon detected in this by my father, who only scolded me for committing the theft. This was my course of conduct until my father died, when I was in my 17th year.—At his death he left his property, which was but little, to my mother. Very soon after the death of my father, it was found necessary to dispose of his children, as the property he left was entirely insufficient for their maintenance, and I was bound an apprentice to Oscar Mallary, to learn the trade of brick and stone mason. I soon made myself useful to my master. Indeed, at this time, I had seen the error of my ways, and saw the necessity of exerting myself—which I did—leaving off many of my bad habits, playing cards, in particular; and I so conducted myself as to obtain the entire confidence of my master; and I am not sensible that I ever defrauded him out of one cent. When I arrived at the age of 21 years, I was a complete master of my trade; and so much confidence did Mr. Mallary place in my ability and honesty, that he gave me a power of attorney, to manage

the construction of the Farmington aqueduct across the Farmington river, in the state of Connecticut. I went there to take the whole control of the mason work, and while engaged in constructing the aqueduct, I had some difficulty with one of the sub-engineers, who gave some orders to my workmen, in my absence, different from those I had previously given them, and when I returned, we had a severe and serious quarrel. I reported him to the chief engineer, and the result was, for his misconduct upon various occasions, dismissed from the works. And here I will again observe, that however culpable I may have been for many of my acts in this instance, I believe I was in the right, and that gentleman (God forgive him) was wrong. In the quarrel we had, I recollect I became very violent, and perhaps, which I think I did, threaten his life, if he again interfered in my business. After the difficulty with the engineer was over, we progressed with the work, until it was entirely completed to the satisfaction of the chief engineer, who gave me a certificate of the fact. I then returned to Mr. Mallary, who was entirely satisfied with my conduct.

I remained in the state of New York for some time, not being engaged in any particular business, I soon fell, gradually, into the habit of playing cards, and acting dishonestly while so engaged, either by taking advantage of the ignorance of those whom I was playing with, or cheating others in the best way I could.

While in the village of R. I went frequently in company, and soon formed an intimacy with a female of that village. She was young and handsome, and enjoying a reasonable share of the happiness of this world, with a respectable and wealthy aunt—having lost both her father and mother. Our intimacy soon grew into a strong attachment, particularly on her part. On seeing this, I took advantage of her confidence, and misled her; I ruined her by false vows, and lying protestations of love; and often have prayed to my God to forgive me for this my blackest act of villainy.—I saw her situation, and fled from the place; and shortly after I heard of her death. She died in giving birth to the fruits of my villany. I went to Bristol, Pennsylvania, and engaged in a contract with Morris & Dorrance, to build an aqueduct across Knowls' creek, on the Delaware Division of the Pennsylvania Canal. I completed this contract to the entire satisfaction of Messrs. Morris & Dorrance. While engaged in Bristol, I indulged in all kinds of dissipation, except that of intemperance; almost every night playing cards or some other games for money—acting in the most dishonest manner,—cheating and defrauding whenever a proper opportunity offered. Upon one occasion, while at that place, in changing money for an old gentleman, I passed on him two counterfeit five dollar bills of the Camden Bank, which I had but a few days before purchased for fifty cents.

I left Bristol in 1829, and engaged a contract on this Morris Canal, as a partner with an individual by the name of James De Treut, to complete one section in three weeks, near the residence of Charles I. Ihrie, in Greenwich, within one and a-half miles of Easton, Pa.; and in consequence of my partner not fulfilling his

part of the agreement, by furnishing the necessary funds for progressing the work, it proved to me an unprofitable job, being obliged to hire money. I however completed the work, through the assistance of some kind friends, particularly Charles J. Ihrie, who knew how I was situated, and he for his kindness has been remembered in my prayers. I arranged all my business here, and left for Bordentown, in March, 1831. When I first came to Bordentown, I went to the house of Elias Thompson, and there took boarding, and soon got engaged in the employ of the Camden & Amboy Rail Road Company, and remained in their employ as contractor and otherwise, until August, 1832. I remained at the house of Elias Thompson about two months, when, through the persuasion of some of my friends, I left there and took boarding at Mrs. Longstreth's. At this time, Dr. Hamilton, the husband of the unfortunate Mrs. Hamilton was living. He died, however, a short time after I went there. I soon experienced a most violent attachment for Mrs. Mary W. Hamilton; and very soon after her husband's death, made advances to her, which like a wise and prudent woman, she refused at the moment. This, however, did not discourage me, supposing it was in consequence of the too recent death of her husband. I then made up my mind to wait until a sufficient time elapsed, when I could, without indelicacy, press my suit. I will not, however, neglect to mention, that during this time I did not omit working ardently so as to approach her under color of friendship, doing many little favors for her and her mother, Mrs. Longstreth, for the purpose of keeping in her favor, and paving the way for a bolder effort at a proper season. I was so completely captivated by the charms of Mrs. Hamilton, that I could hardly suffer myself to be out of her sight a moment—indeed, almost entirely neglecting my business—yet, at the same time, took good care to have my rolls made out sufficiently large to cover all my neglect. My enormous demands on the paymaster, Mr. Shippen, finally excited his suspicion, and he refused to pay me the amount of my roll list, and told me that he believed I kept false rolls. We had a few hard words, when he referred me to Mr. E. Stevens for settlement. I went to him. and managed so as to come out clear of all suspicion, although I did act very dishonest in many instances. I soon began to see the necessity of exerting myself to make an impression, and win the affections of Mrs. Hamilton. I made my advances towards her, and they were received at first with apparent good feeling and satisfaction. I continued there until we became quite intimate. I was frequently in her company, privately; yet she always acted with prudence and discretion. She went to pay a visit to her friends at Princeton: I inquired of her mother, Mrs. Longstreth, and ascertained the time she wished to return home, and went up in a gig to bring her. She appeared glad to see me, made inquiries of me about her family and friends. We came home together the next day, and her conduct towards me, during this interview, gave me much encouragement. During our frequent associations together, for they had by this time, the entire part of the summer 1832, became very frequent, I observed I had

a rival in my way, in the person of my friend, William Lee Wells. I soon found that he was warmly attached to Mrs. Hamilton, and was jealous of my attentions. I no sooner discovered this, than I sought and had an interview with him. He told me Mrs. Hamilton and himself were then engaged to be married, and at a certain time it was to take place. This was confounding news to me—I could not understand it—she had given me encouragement, in public and private, and I could not believe it was the case. I looked upon it as a mere tale, for the purpose of inducing me to withdraw my attentions from Mrs. Hamilton. A few evenings after this conversation with Wells, I was in company with Mrs. Hamilton, in the back dining room—we were alone. We began to talk about Mr. Wells — I introduced the conversation for the purpose of ascertaining her opinion of him. I soon discovered that she was not indifferent towards him. She told me he was wealthy—that he had several thousand dollars in cash—and that he was a gentlemanly man. I then discovered myself involved in a difficulty I never anticipated. I knew, however, Wells was not worth a cent, and that I had it in my power to destroy his prospects in Bordentown. He was engaged on the Railroad. I made use of the means in my power, and did succeed, by dishonest means, to make a bankrupt of him. He, however, continued his addresses to Mrs. Hamilton. I then went to Philadelphia on business; and, while there, Mrs. Hamilton and Mr. Wells came down—Wells did not know that I was in the city. As soon as he discovered the fact, he charged Mrs. Hamilton with having concerted the plan to meet me there. She denied it (and correctly did so) for she did not know I was in the city. Wells left the city. I waited on Mrs. Hamilton about the city—to the Museum, Theater, parties, etc. I left her in the city, and came up to Bordentown. In a few days she returned—she then gave me to understand, that she was satisfied with my attentions in preference to Wells. She had discovered Wells in many misrepresentations. She told me she was mistaken in the man—that he was not the kind of a man she first supposed him to be. Wells did not appear to abandon his suit, but persevered. I again called on him, and told my situation towards Mrs. Hamilton, and that I had discovered the falsity of what he told me, and that he must retract what he had told me, and cease visiting Mrs. Hamilton, or he or I must die. He looked at me a moment, and asked me if I was in earnest, and, with an oath, I swore I was. He then told me that she had deceived him, and she would deceive me. I told him he must not say so to me, it was slandering her, and that she was not capable of deception. He saw that I was serious, recalled his words, and left me. In a few days after this he was discharged by Mrs. Hamilton, after she had told him how he had deceived her.

Wells was ardently attached to Mrs. Hamilton, and the attention by her had a serious effect on him—he was almost deranged, and in consequence of her treatment he took a large quantity of laudanum, but not a sufficient quantity to destroy his life. He called on me while in this sorrowing state of mind. I pitied him—he told me his situation of mind, and that he was out of money—I loaned him some.

A few days before he left Bordentown he asked to speak with me privately. We went into a room together. He there told me all his troubles, and how his business had been destroyed, his character slandered, and the treatment of Mrs. Hamilton. He was not aware poor deluded and misused man, that I was the individual who had ruined him. He cautioned me to beware of Mrs. Hamilton. He said she had acted the coquette with him, and that she was conscious of her beauty and fascinating manners, and her only object was to attract admiration, and secure the attention of gentlemen. I stopped him in his career of talking, by telling him if that was all he had to say to me, I would not, I could not listen to him, and that I did not believe Mrs. Hamilton capable of acting with duplicity. This was my last interview with Mr. Wells. I was the cause of his ruin. He left Bordentown in a few days after this, and I did not see him again until I saw him on my trial as a witness.

I now had frequent intercourse with Mrs. Hamilton, who appeared to be well satisfied; indeed she favoured my attentions at all times. Our conversation in private was generally upon the subject of matrimony, and from our intimacy, and living under the same roof, we conversed with freedom upon almost every subject connected with our intentions; she, however, with all the prudence she was so highly favored with, shewed no advancing disposition, but appeared rather reserved than otherwise. I, however, possessed for her that deep and abiding love, that pure and unsullied affection, that formed and prepared me to overcome every difficulty, that I might enjoy her company, and secure her as a companion. I was determined, at all hazards, boldly to demand her hand, and if refused, to press my suit. Still, however, until I should be able to make an impression on her heart, and reduce it to my will, and I soon enjoyed, as I supposed, the pleasing hope. We exchanged many presents; she received mine with apparent pleasure, and seemed to manifest an interest in my business and prospects. I paid her, and her little daughter, every attention: the latter, for the purpose of securing more strongly the affections of the mother. But all did not answer my great purpose, for, whenever I approached her as a suitor, and sought her hand, she immediately avoided me. And yet, at other times, she appeared glad of my company, and gave me much encouragement. In my frequent absence from Bordentown I would write to her, and in my letters I would portray the anguish of feelings, the violence of my attachment for her, and request of her to answer my letters. She did not, she never did. During this time, in the winter of 1832, a Mr. Dayton came to board in the house of Mrs. Longstreth. He was a young man, a lawyer by profession. He had not been there long before I discovered that he was not my friend, and that he was doing all in his power to induce Mrs. Hamilton to discard me entirely. No sooner did I ascertain the fact, than I commenced my attacks upon him, and upon every occasion, when opportunities offered; before the family of Mrs. Longstreth I would express my opinion of him very fully, and not at all to his credit, and at last it came to his ears. We met, and many violent words passed between us. I told him I was ready to give him any satis-

faction he required, and in any way he wished. I was wrought up to a fit of phrenzy, and would have taken his life in a moment, had he not ceased his conduct towards me. I heard no more of Mr. Dayton for some time. I was engaged with Mrs. Hamilton. We went out riding and walking together frequently. She appeared still fond of my company, and encouraged my attentions, and beyond that I could obtain no satisfaction, either by words or acts. In February I presented her with a ticket to go to the Twenty-Second Ball, and engaged to go with her, but when the time came I found there was some difficulty with her, and I soon ascertained that it was because she had promised to go with me to the ball. As soon as I heard that, I told her to go with whom she pleased. She said she had no particular objection in going with me, except that it would increase and give credit to the report afloat that we were soon to be married. I thought that a proper excuse, and released her from all engagements she had made with me. She went to the ball in company with Mr. Dayton, and returned with Mr. E. Stevens, as I was informed. After this she treated me with coolness, and I was satisfied it was in consequence of some communication made to her by Dayton. I sought to ascertain from her the fact, but could not. She requested that I would cease visiting her. I asked her for her reasons, but she would not give me any. I afterwards understood the cause of her not wishing to go to the ball with me. Mr. Dayton had told her if she would go with him to the ball, he would introduce her to Mr. Stevens, a young gentleman of immense wealth, and one who had expressed for her a considerable attachment. This, doubtless, was the cause of her refusing to go with me to the ball, and afterwards refused my attentions. The anguish of my feelings at what I supposed to be the misconduct of Mrs. Hamilton, in treating me in this manner, after she had given me every reason to believe my attentions to her were agreeable, was too great for me to suffer under. She had never agreed to marry me, but had led me along in such a manner as to induce me to believe she would one day have me. I was determined still to persevere, vainly believing that I might yet succeed in bringing her back to me. I went down to Philadelphia with Mrs. Longstreth, her mother, who had just recovered from a spell of sickness. I paid her every attention while going down to the city, and while in the city. On board the steamboat I entered into conversation with Mrs. Longstreth about the conduct of Mrs. Hamilton. I thought to succeed in gaining her interest in my favor. I had done much to assist Mrs. Longstreth in her business, collecting her monies, etc. I recollect telling her, in the conversation, that I looked upon Mrs. Hamilton as a female of the choicest character, and embracing every requisite calculated to please and render a man happy, and that I entertained for her feelings of the strongest kind; and that my friendship for her was greater than for any other woman living. Mrs. Longstreth replied to me, and said she did not doubt it for a moment, and that she was very sorry that Mrs. Hamilton did not go to the ball with me, if she had accepted

the card of invitation, and that she had told her she had done wrong. She said she believed the whole difficulty arose in consequence of the improper interference of Mr. Dayton, and that she believed Mr. Dayton was much disappointed, because Mr. Stevens did not return home with Mrs. Hamilton. People, she remarked, consider Mr. Stevens a bad fellow among women, but, added she, I would not be afraid to trust him at any time, or in any place with Mary. I asked Mrs. Longstreth if she knew what opinion Mrs. Hamilton entertained of me. She answered me, that she always spoke of me in the highest terms, and defended me upon all occasions. This was a great consolation to me, and tended to increase my hope.

Mrs. Longstreth knew of my having made Mrs. Hamilton a present of an album, a gold watch, a variety of rings, and other articles, and she remarked to me that she did not approve of ladies accepting presents from gentlemen, rings especially, unless there was an engagement to be married; for, she said Mrs. Pitcher accepted a ring from a gentleman, and favoured the attentions of another, and it was afterwards attended with much difficulty and trouble; and that she always told her daughter not to accept rings or other presents of that kind, unless they were so engaged. When we arrived in Philadelphia, Mrs. Longstreth requested me to write to Mrs. Hamilton, which I did, informing her as to the health of her mother, and the time she contemplated returning. While in the city I paid every attention to Mrs. Longstreth; I waited on her upon every occasion. I felt it my duty to do so, for she always treated me like a mother.

While laboring under this state of excitement and uncertainty I felt that I was prepared to perform any act that would facilitate my views, and gain my point with Mrs. Hamilton. My love for her was violent—I felt I could not be satisfied that she should escape from me, and be enjoyed by any one else. I however began to experience a slight change in my feelings towards her; for I had become almost satisfied that she would refuse my addresses. I was determined, however, to make one more effort, and attempt, if possible, to gain her esteem. I used every means in my power —I made her additional presents, which she accepted with apparent satisfaction. I urged her by every consideration of future happiness, to believe me in my protestation of love, and assured her I possessed the means of making us happy. She listened to me attentively, and at last told me she could not love me, she could not marry me, and she requested me to take all the letters that I had written to her, and urged me to leave her, and never again speak to her upon the subject. I received the letters, and we parted. At that moment, my feelings of love changed into the most inveterate hatred; I resolved on revenge. It was with the greatest difficulty I could at all restrain my feelings, I set myself about settling up my business, of which I paid but little attention to for a long time; for I had neglected almost everything to wait on Mrs. Hamilton, and enjoy her company. After I had closed my business, I went to Philadelphia—my feelings had become perfectly

abandoned—I became dissolute, and indulged in all the vices of the city, visiting the sinks of vice and misery; indeed, I became regardless of all consequences—I felt that I had been trifled with, and had been a dupe to the convenience of Mrs. Hamilton. I visited one evening a house of ill-fame, and there I made an engagement to remain all night with one of its dissolute inmates; in the morning I awoke early and robbed the woman of many articles of jewelry of considerable value, particularly a gold watch, which I afterwards sold for forty-five dollars. I left there the next day, and went up to Bordentown, packed up all my clothes, paid off all my bills, and made arrangements to leave for New York. I told the family, and my friends generally, that I did not expect to return again. I left my trunks in the care of Mrs. Longstreth, told her I would send for them, and went on to New York. I remained there some days, indulging in all kinds of dissipation, visiting the theaters, visiting bad company, and committing larcenies of various kinds. While there, I committed a larceny similar to the one in Philadelphia, and the next day left for Albany. When I arrived in Albany, I disposed of the watch and jewelry I had stolen from the females in New York and Philadelphia, to a jeweler in that place for a watch of a different kind and a valuable set of jewels, which I intended for Mrs. Hamilton, on my return, when I intended to make my last and final effort. While on board the steamboat to take my passage for New York, I met an old friend, who accompanied me down to New York. He observed to me that I appeared much changed from what I was when he last saw me, and that I showed a stronger disposition to drink. He wondered at the change, and spoke of it frequently, inquiring the cause—I did not satisfy him. We arrived in New York, and took lodgings at different hotels.

I had not been in New York but a short time, before I was taken in custody by the police, charged with stealing the jewelry: I went before the officer—I then employed counsel. While at the office, my friend had discovered my situation, and had come down to the police office to assist me. My counsel, Mr. Wiles, succeeded in getting me out of the difficulty, but it was attended with the loss of all my money, and I was obliged to leave in the hands of my counsel my gold watch and the jewels I procured in Albany, as a security for his fees. They were afterwards redeemed by my friend for $65. As soon as I got completely relieved from this difficulty, I returned to my lodgings—I retired to a room to reflect on the course to pursue. My feelings at that time were indescribable—I felt that I had been trifled with, neglected, discharged, and despised. I felt that I was alone in the world, and no one to feel any interest for me; my very existence appeared to me a burden While ruminating in this horrible state of feeling, I suddenly became nerved and strengthened in my feelings of revenge. That dreadful feeling appeared to me as a consolation. I determined to seek another interview with Mrs. Hamilton; I would appeal to her feelings once more, and if I should be rejected, I would pursue the dictates of my revengeful feelings. I left New York on Thursday

the 4th of April, 1833, determined on the course I intended to pursue. I arrived in Bordentown about 4 o'clock in the afternoon; I repaired immediately to Mrs. Longstreth's, and in going through the hall of the main building, I met Mrs. Hamilton. She was in all her former loveliness. She met me with a smile playing about her lovely mouth, and shook hands. My hardened feelings relaxed; there was a momentary change of my determination, and for a moment, instead of possessing the feelings of a demon, I possessed the feelings of a man. Oh, my God! why were they again changed? why were they again suffered to return? why was I made the instrument to remove from the world an angel, and throw a dark and heavy gloom around a once happy family? But I cannot dwell thus. She inquired about my health, asked me with a feeling of sweetness about the health of my mother, whom she supposed I had been to see. She inquired of me if I would have dinner; I declined. She looked me in the face, and said, "Clough, you are not well"; I answered her. "I was not, and she well knew the cause of my disorder." We parted at the foot of the stairs; I went up to my room. When I got there, I threw myself on the bed almost exhausted. I remained there some time in a state of uncertainty as to the course I would adopt. I was called to supper—I went down. I could not restrain my feelings. I returned again to my room, and threw myself on the bed: in a few moments Mrs. Hamilton came to my room. She informed me that tea was ready, and wished me to get up and take some. I told her I wished no tea, and that my feelings were such that I had rather die than live, and that she was the cause of all my troubles. She made no answer, but turned away and went out of the room; in a short time she returned with her cousin, Mr. Eastburn. When she entered the room, she remarked to Mr. Eastburn that I was quite unwell, and that she thought if I would come down stairs, and taste some supper, and walk about the town, I would soon recover my health and spirits. She again went out, leaving Mr. Eastburn in the room with me; we conversed together about twenty minutes, when he left the room also.

I got up and went downstairs. I heard my name mentioned several times in connection with Mrs. Hamilton's, in terms of derision, and particularly by Mr. Dayton. He seemed to be aware of my situation of mind and body, and, from his conversation, appeared to exult in my misfortune. I went into one of the rooms, where I found Mrs. Hamilton seated with some company. I there heard much calculated to excite my passion. The conversation appeared to be about a Mr. Lippincott, and his addresses to Mrs. Hamilton. It was directed to her, and she appeared to be delighted with the association. Someone asked her when they were to be married. I could remain no longer—my brain turned —my heart contracted—I was mad with agony—I reeled out of the room. My feelings became wrought up to the highest pitch of desperation. As I left the room it appeared to me as if Mrs. Hamilton laughed at my misfortunes, and gloried in the troubles she had led me into. I retired to my room, and threw myself on the bed.

About ten o'clock Mrs. Longstreth and Mrs. Hamilton, as they were going to their lodging room, stopped at my door and inquired if I would have anything. I thanked them, and answered that I wanted nothing. They retired to their bed. I arose and went downstairs. Was gone about fifteen minutes. I returned to my room, unlocked my trunk, and from it I took a dirk. I unsheathed it. I held it before my eyes. Fatal instrument! It was a present from Mrs. Hamilton—the property of her deceased husband, and given to me at a time when I supposed she loved me, and when I was anticipating every happiness. I examined it again and again. I recollected when she gave me that fatal instrument; she also gave me a lock of her hair. I sought the hair, and found it. I examined it also, and after long, horrible, demon-like reflection, I resolved, fully resolved, that she must die. I smiled to think that the dagger she had given me, and which I then held in my hand unpolluted, should be the instrument, in my hands, to seek her heart's blood, and see it ooze for vengeance. Returned to my bed and slept soundly, for I was calm and collected. My hellish purpose was fixed. When I arose in the morning I felt refreshed for a few moments only. The thought of murder flitted across my mind. The horrors of shedding innocent blood presented itself to my senses. The conflict, at that moment, was great, but my revengeful purpose prevailed. Mrs. Longstreth came into my room, she bade me good morning, and asked how I felt. I told her no better. She held an orange in her hand, and desired me to take some of it. I told her I would rather not. She urged me, and said it would take the bad taste out of my mouth. I then accepted a part of it. She requested me to go down to breakfast. I told her I did not wish any; she, however, manifested so much solicitation and interest for me that I consented to go to the table. When I got to the dining room I found the company seated at the table, Mrs. Hamilton at the head of it. She appeared to be in the most glowing spirits, laughing and talking with everyone. As I entered the room I passed the salutations of the morning, and seated myself at the table. Everything appeared to be said and done for the purpose of aggravating my feelings. After I had helped them that were around the table, I drank a little coffee. I could remain no longer. I left the table, I wandered about the town until near eleven o'clock, when I returned to the house again. Mrs. Longstreth remarked to me that I appeared very dull. I went to my room. Nothing of importance occurred throughout the day. In the evening, while I was in my room, Mrs. Hamilton came there and seated herself on the foot of the bed. She asked how I felt. I told her I could not describe my feelings. She remarked to me that I was doing myself great injury by giving way to my feelings. I told her I could not help it, and I did not care how soon I was dead. She arose from the bed and said, "Why, Clough, you frighten me." I at that moment had my hand on the hilt of my dagger, and was on the point of drawing it. I looked in her face and found her gazing at me with her former sweetness. I was overcome. I could not have used the dagger at such a moment. I fell back in my bed. I lay a few

moments. My strength returned. She was still sitting on the bed. I told her as soon as my health would permit I wished to go to Philadelphia to arrange some unsettled business. She knew, for I had informed her of my misfortune in New York, giving the particulars, she knew I had by some means lost all my money, my watch, etc. She told me if I wished to go to Philadelphia, she would let me have her watch, and what money she had if I would accept it.

I declined receiving anything from her. I could not understand the motives that induced her to make the offer, unless it was for the purpose of returning the watch which I had presented her in exchange for an old-fashioned silver one. I again reminded her of my situation, and of her being the cause of my troubles; at the same time telling her, that I had given up all hopes of marrying her, and that I cheerfully forgave her all the wrong she had ever done me. I done this for the purpose of again trying her feelings, for my mind at that time was fully decided upon the destruction of her life. She replied to me that she was sorry that she was the cause of my troubles, and would be glad to relieve me in any way she could. She told me that she entertained for me the strongest friendship, but that she could not marry me, for she did not love me, and that I must give up all hope on that subject.

She then left my room,—I arose from my bed, and walked about town for some time. I returned to my room with renewed feelings of desperation. I retired to my bed and slept soundly until the morning—Saturday morning arrived; I arose early, went down to my breakfast; I had no appetite; I soon left the table, and took a short walk on the bank of the river. I returned and went into the front parlor, there I found Mrs. Hamilton and her little daughter, Caroline. I sat down on the sofa; Caroline came to me. I asked her to play for me on the piano. I gave her my music book. At that time I was laboring under the most horrible feelings that can be imagined. I left the parlor and retired to my bed room, fully prepared, the first opportunity that offered, to take the life of Mrs. Hamilton. I placed the dagger in my pantaloons pocket, and threw myself on the bed, and fell into a doze. About 12 o'clock I was awakened by someone who opened the door—my back was towards the door of my room—I turned over, and found it was Mrs. Hamilton. She spoke to me, and roused me up. She asked me if I heard her come into the room. I told her I did not, that I was asleep. She asked me how I felt. I told her very badly. She came to inform me that dinner was near being ready, and wished to know if I would have anything in particular to eat. Her motives for coming into my room was of the purest kind—she came in consequence of the indisposition of her mother, to administer to my wants.

In answer to her inquiries, I replied that I could not eat any thing. I asked her to give me some laudanum, that I might sleep (the vial containing about a quarter of an ounce of that liquid was standing on the table at the head of my bed) for it was the only time I felt free from my troubles. She prepared some, mixed with water, how much I cannot say; handed it to me, and I drank it. I expressed a wish to get up, but she observed my weakness,

and desired me to lie still. I insisted on getting up, and succeeded, hardly able to stand and support myself—I leaned on her shoulder. While in this situation, someone was heard in the entry, when she observed to me, "Clough, I should not like anyone to know I was alone with you in this room." At this moment there was an awful conflict going on in my breast; my strength, perhaps, from the effects of the laudanum, was returning; I could hardly restrain myself for a moment—I knew her danger, and requested her to go out. I raised myself from her shoulder; she opened the door and walked into the entry, and there she found the black servant girl; she gave her some orders about dinner—my strength had entirely returned—I felt an exhilarating joy in my bosom—I felt my revenge was near—my determination became fixed. I put my hand in my pocket—I felt the dagger, and it appeared to me that I possessed the strength of a Samson. I seated myself on the side of the bed, waiting her return. She came in and shut the door after her. She came up to me; we conversed some time. I told her I wished her to take the keys to my trunk, and putting my hand into my pocket, I pulled out the dagger, and in an instant rushed from off the bed; struck her with it in the breast; she fell to the floor.

I looked at her a moment. I could not see her face. Her head was bent down. I hesitated. She arose, and while in the act of fleeing, I struck her again in the left breast. The dagger passed up to the hilt. I drew it and repeated the blow. She screamed for help. I could not see her face—it doubtless would have unnerved me. The fourth blow of the dagger did not penetrate, but glanced through her arm. She grasped me by the neck, and someone opened the door. She gained the door, with my left arm around her, and her right hand hold of my collar, while standing in the door with the dagger uplifted. Her youngest sister Elizabeth, I think, rushed forward and seized my arm, and exclaimed "Don't, don't, Mr. Clough, don't kill her." I shook her from my arm and struck the blow. The dagger pierced the breastpin, and was, for a moment, fast. I drew it back and struck again. She then fell in the entry, still retaining her hold of my collar. She drew me down, I recovered on one knee, and held her in my lap with her left breast exposed and turned towards me. I here twice or thrice buried the dagger in that innocent bosom. She turned her head towards me for the first time in this tragic scene. She spoke. I saw that lovely face; it was calm. She breathed in low and almost indistinct accents, "Oh, Clough, 'tis done, I can't marry you—I die." Here the dagger fell from my hand—my strength, too, failed me. I released her from my hold, and fell back. She sprang on her feet, and ran downstairs screaming and hallooing "Oh, mother, mother!" I could hear no more. I crept to my room, and succeeded in getting on the bed, completely exhausted. My rage ceased; my revenge satisfied; but I had neglected one consideration, I had forgotten to take my own life. I felt satisfied. I soon ascertained she was dead. This was joy to my heart. I was happy, and gloried in the result. At that time I cared not for life, but I was gratified that I did not imbrue my hands in my own blood. The rest is known.

I never realized the great importance of my situation until since my trial; when I have felt all the horrors of a "hell within my bosom, and a curse upon my head." Often have I seen that lovely woman, in my midnight dreams, in perfect loveliness, and wondered to myself how I could shed her heart's blood. I have prostrated myself before my God, and implored him to give me signs of his forgiveness. She knew my supposed wrongs, and how they operated upon my poor weak nature, and converted the tenderest affection into the most deadly hatred. I have suffered days and nights of sleepless anguish; my heart has been preyed upon by the worm that never dies, and my brain has been burned with an unquenchable fire. I have suffered a hundred deaths, and gladly would I have suffered a hundred more, could I be satisfied that the innocent woman that I sent so suddenly from time to eternity, was safe in the hands of her God. Pride of character—an uncurbed passion—fondness for cards—has been the ruling and besetting sin of my life; and my prayer to heaven day and night is, that all my sins be erased from the register of heaven, and that the whole world may be brought to see the folly of worldly goods, and direct their attention to things of godly importance that exist eternally. I have committed sins of the deepest and blackest dye; but through the blood of Jesus Christ, I hope and earnestly pray that I may be redeemed, regenerated, and saved from the pit of perdition and the tortures of hell, that I so justly deserve.

Remember, reader, when you peruse this brief sketch (which, as far as my memory serves me, is correct), when you wonder at the crimes I have committed, that human laws have been satisfied with an atonement of my blood.

THE EXECUTION

On the 26th of July, 1833, the miserable man was placed upon the scaffold for execution. He rode from the prison attended by Rev. Mr. Moorehouse, Rev. Mr. Willmer, and the Sheriff, followed by about twelve thousand persons. The place of execution was situated about two miles from Mount Holly, in the center of the highway. At about twelve minutes after one o'clock a hollow square was formed around the scaffold by a battalion of infantry, consisting of about five hundred men. Clough ascended the scaffold with a firm and resolved step, arm-in-arm with the clergy who accompanied him, followed by the Sheriff. He was dressed in white—the fatal rope was coiled around his neck and breast; he looked upon the crowd—and then seated himself on a chair apparently exhausted by his exertion. A hymn and prayer opened the religious exer-

cise; Clough wept profusely, and seemed now to see his situation. His farewell letter to his mother, and an extract of his confession was read. The clergymen then shook hands with him and he seemed much affected; they descended and the Sheriff approached him—Clough stood firm as the marble statue, and stared death in the face, with a calm resolution and determined countenance and conversed freely with the Sheriff; he assisted him to place the knot under his ear, shook hands with him without emotion; the cap was then drawn, the Sheriff descended, and in an instant the victim of justice stood before his Maker to give an account for the deeds done in the body.[9]

[9] Letter from Joel Clough to his Mother, written only forty-eight hours before his execution.

Mount Holly, July 24, 1833.

Dear Mother: I hope that the agonizing feelings which my situation has caused you, have not been the means of consigning you to the tomb; but I am fearful ere this letter reaches you, it will find your place vacant. But should you live to receive it, I enjoin upon you, by all the ties that ever existed between a mother and son, to strive in your advanced age to bear up under the awful and solemn result of my execution, which must take place in forty-eight hours from this time I am now addressing you. I have at this time chains upon my legs and handcuffs upon my wrists; yet I feel that I cannot leave this world without imparting to you a pledge of my affection. Yes, to you, Mother, who watched over my childhood, it was my duty to be a staff and support to you in your advanced age; but circumstances are different. The only comfort that I am able to afford you now at this very late hour, is, that I feel I shall be prepared to meet you in Heaven. I am so well satisfied that it is through the Lord Jesus Christ that sinners are to be saved; that is in Him alone that I put my trust. Believe me, dear mother, my only hope is in Him who can save the greatest sinners. Mother, the reason that I have not written to you since my trial, is, that I could not satisfy you as regards my spiritual welfare. I now trust that I am able to give you satisfaction; and although I am to die an untimely death, perhaps it is a mercy that I am thus called, or it might have been the will of God to remove me from this world when unprepared. I am therefore resigned to my situation. Since I commenced this letter, I have been baptised by Bishop Doane, a Protestant Episcopal clergyman, in the true belief of the Lord Jesus Christ, and I hope to meet you, perhaps soon, in the regions of bliss, and also my beloved sister, who no doubt died in the same faith. There is no other hope for any of us. What is this world, compared with

eternal happiness? It is a world of trouble, and we all must sooner or latter part with it, as well as all the objects of our affection. Although death may seem awful, it may be compared to a quiet sleep; and oh! if we are prepared, why should we fear to die? I therefore give myself to God, trusting in his Son. I also leave you in his hands, hoping that you will still be faithful—that we may meet where parting will be no sorrow. Mother, I bid you a long farewell for this world; and do bear up with fortitude under this trouble, that it may not shorten your few remaining days.

Your Son,
JOEL CLOUGH.

MRS. JOANA CLOUGH,
North Murray, Orleans Co., N. Y.

Letter to a friend asking aid.

Monday, April 18, 1833.

MR. JAMES WALLACE,

Dear Friend—The time has now arrived which obliges me to call upon you for assistance—not in a pecuniary point of view, but, dear sir, as a witness for me. If I can prove by you that my mind was in a kind of deranged state at the time I was with you in New York, it may be the means, with the assistance of other testimony that I shall be able to procure, of liberating me from an awful death, which will not only be the means of bringing upon myself an eternal stain, but a stain upon all of my connexions, who are many, that I shall leave behind. You, of course, have heard that I am now imprisoned in this place on a charge of murder, inflicted upon Mrs. Mary W. Hamilton, whom you have once seen. The circumstances are of a peculiar nature—it was not a premeditated act—if so, nor no malice aforethought, and from the peculiar state of the case, you will be the most important witness I can have; and in the result of my trial, I think the die will be cast (with a few other witnesses) upon your testimony. Notwithstanding the multiplicity of your business (which I know must be very disadvantageous for you to leave) I do not see how it is possible to excuse you. You will also bear in mind that little foolish misfortune I met with in New York, and you know I told you the cause of it. With deep regret, I yield an acknowledgment to you that I done wrong in not taking your advice by leaving Bordentown and coming immediately to you, and entering into business; but you must know the reason. Alas! she is no more; and I feel myself innocent. I also feel that it is not only a duty to myself to use the best exertion to get clear, but also a duty I owe my friends and relations.

My friends have volunteered their services to assist me, to wit: (Mr. George Law and Mr. Charles I. Ihrie) besides friends from Philadelphia, and the most able counsel that can be procured are already engaged for me. I wish when you come, you would call on Mr. (Merritt) in New York, and have him assure you that nothing will be said concerning that late affair.

Letters from Clough's brothers.

Monday, April 18, 1833.

Dear Brother: With a heart full of grief, I write to you. The news I heard makes me shudder. I hardly know what to say to you on the painful scene. I understand that you have murdered, which, if true, will cost you your life. I have just received a letter from you, and have now seen the newspapers confirming it. Joel, what have you done! My God have mercy on you! It is an awful thing —may the Lord have mercy on you. I expect there is no hope of your life, but can look to none but God. I hope that you pray to God to forgive you. I hope that you will have time to repent of the awful crime. It seems that you did not think any thing about your friends' feelings, and especially your mother. Mother is in Rochester—how she will feel, you must judge. I expect she will live with me. Our prayer is, that God will have mercy on your soul. After I began this, I received your letter, and saw the news print. I think you had better write to mother, perhaps it will be a consolation to her. I bid you farewell for ever—dear brother, farewell.

I remain your friend and brother,

Joel Clough. WESLEY CLOUGH.

Monday, 18*th April,* 1833.

JOEL, I cannot help you, but you must look to God, who is able to save the worst of sinners. Must I bid you farewell for ever—I must —O Lord! have mercy on you!

Once respected and very dear Brother,

Agreeable to your request, I write you. This day we received your letter, and likewise the account of the crime you are imprisoned for. Your friends and acquaintances are struck with horror; for myself, I know not what to write to you. You wrote that you must have been influenced by greater power than mortal power; neither of these form any excuse in our minds. It appears that, through the mercy of God, you have a short space for repentance, and I beseech you, by all the ties of nature and friendship that ever existed between us, to improve the time. Jesus came into the world to save sinners. My prayer is, that God will have mercy on your soul.

H. W. BATES.

Joel Clough.

THE TRIAL OF CHRISTIAN SMITH FOR THE MURDER OF BORNT LAKE, NEW YORK, 1817

THE NARRATIVE

This is the common story of a neighbors' quarrel over land and property which results in a law suit, mutual recrimination, hate and revenge. There is finally an accidental meeting of the parties and one of them kills the other. The scene is laid in a typical American county and the trial which takes place in a typical country village collects the people from every part of the vicinity, the little Court House is too small, and the court adjourns to the church which will hold more people, but which is crowded to the doors. The killing is admitted, but fortunately the prisoner has a better reputation among his neighbors, who are trying him, than has his victim. The solemnity of the place, the awful occasion on which the auditory had assembled, the situation of the prisoner and his weeping relatives who are all present, combine to excite a peculiar sympathy in his favor, which is heightened by the eloquent appeal to the jury made by his counsel. The jury after seven hours' deliberation returned a verdict of not guilty, and the prisoner went free but not before receiving from the judge a caution which he probably never forgot for a single instant as long as he lived.

THE TRIAL [1]

In the Court of Oyer and Terminer, Richmond, New York, May, 1817.

[1] *Bibliography.* [*] "New York City Hall Recorder," ante p. 61.

HON. WILLIAM W. VAN NESS,[2] *Judge.*

May 31.

The prisoner was indicted for the murder of Bornt Lake, on Sunday, October 27, 1816, by firing and discharging at the said Lake, a certain musket, loaded with shot by means of which, he, the said Bornt Lake, instantly died.

Thomas Lester for the People.

Mr. Price, Mr. Phoenix[3] and *Mr. Wallis* for the Prisoner.

Mr. Lester stated that he expected to prove in the course of the trial that the deceased and the prisoner, being neighbors, certain unhappy differences subsisted between them, for sixteen years; and that previous to the day laid in the indictment, the prisoner had expressed his hostility towards the deceased, and threatened revenge. On the morning of the 27th of October last, the deceased was found dead in the public highway, near the land of the prisoner. A rammer and clasp belonging to a musket were found near him, and his back was pierced by a great number of wounds, proceding from gun shot. On searching the house of the prisoner two muskets were found, one of which was found concealed in the rafters of the garret, without a rammer and clasp; and those found, exactly fitted the musket. Mr. *Lester* concluded by saying, that he expected to prove this to be a case of the most diabolical malice, which had ever disgraced the records of our criminal courts.

WITNESSES FOR THE PEOPLE.

Daniel Lake. Before the deceased was killed, and during the same month, I had a conversation with the prisoner on the subject of certain lawsuits and other differences between deceased and the prisoner, and offered myself as a mediator. He replied that this would be of no use, as an unsuccessful attempt of that

[2] VAN NESS, William W. (1776-1823). Born in New York. Appointed Justice of the Supreme Court in 1807, but impeached by the legislature in 1820 on a charge of using his office to obtain a Bank Charter. Though acquitted he was removed in 1822.

[3] PHOENIX, J. P. Born in Morristown, N. J. Member of Congress for New York 1843. Died 1859.

nature had once before been made; that Lake still continued to trespass upon him; and that he, the prisoner, could not bear with the night-walking of the deceased, and intended to fix him. The deceased and the prisoner had been at variance a number of years, and the dispute extended to their respective families.

Cross-examined. The prisoner complained of divers trespasses committed by the deceased, to vex and injure; and, among other things, that he had frequently let the swine of the prisoner out of his pen at night, and taken them up, under the town law, and had recovered the penalty, on the ground that the prisoner suffered the swine to run at large.

William Lake, Jr. Am a brother of the deceased. On the morning of the 27th of October last I was at the house of James Burbank, which is about 170 yards southwest from the house of the prisoner, who lives a little off the road. At about 5 o'clock in the morning I heard the report of a musket. I saw the deceased at about 9 in the morning, dead, about twenty-five or thirty yards from the prisoner's gate, in the highway, near the wagon-track, lying on his back. The prisoner lived between the house of Burbank and of the deceased; and near the place where deceased was found. There is a barrack, and on the opposite side of the road, on the southeast side thereof, there is a thick wood. I found a rammer and band of a musket, near the head of the deceased.

Cross-examined. When I heard the report, I was sitting at the fire with Mrs. Burbank; and on going out I heard a voice which resembled that of a child in distress. By reason of the bushes and the unevenness of the ground, between where I stood and the deceased was found I do not think I could have seen either the prisoner or the deceased.

Richard S. Cary. Am coroner of Richmond county. I held an inquest over the body, which I found in the middle of the road lying on his back, covered with a sheet. I found between twenty-five and thirty wounds, made with three kinds of shot—goose, duck and pigeon; the largest of which were moulded. A number of these shot were afterwards extracted. On going to the house of prisoner I found he was absent, but his wife at home; and on searching the house, two guns were found, one of which was without a band or rammer, and appeared to have been recently discharged. This gun was found in the garret, concealed in the rafters; and the band and rammer, found near the deceased, belonged to the gun so found in the garret. The band was at the end of the gun, and in drawing it off it must have drawn the rammer also.

The *witness* hereupon produced a number of shot taken from the body of the deceased, and a shot-bag containing shot found at the house of the prisoner, and the quality corresponded precisely. The *witness* also found a wadding of oakum, strongly colored with powder, in the clothes of the deceased, on his back, and some wadding of the same kind in the prisoner's house. It further appeared that the shot were considerably scattered; and the principal part of the charge entered the left part of the back bone,

nearly under the shoulder-blade. The gun must have been discharged, at the distance of ten yards from the deceased. Some of the shot were found in the neck of the deceased, and some as low as his waist, and several had penetrated nearly through his body.

Mr. Beadle. I was at the place where the deceased was found early in the morning. There were no marks or indications on the ground near the body of the deceased, of any struggle or scuffle between the deceased and any other person.

William Lake. Am father of the deceased. The evening previous to his death, the deceased, being at my house, was directed by me to be back next morning by daybreak, which he promised. I live about half a mile from my son's house; and the place where he was found, was in the direct and usual route to his house.[4]

Deceased, when he went from my house the preceding evening, had a bucket and a bag of meal. About daylight, and while I was in bed, I heard a loud report of a gun, from the sound of which, I believed it must have been pointed in the direction of my house. Receiving information of my son's death, I went to the place and found the corpse in the situation described, surrounded by his wife and six children. I am an experienced gunner, and believe, from the scattered wounds on the body, that the gun must have been discharged at a distance of fifteen or twenty yards. I supposed the deceased must have been shot from the barrack off the road.

VAN NESS, J. In what part of the body would the shot have struck the deceased, on the supposition that the gun was fired at him while he was proceeding along the road towards the house of the witness? The charge would have entered his side.

There had been frequent quarrels between prisoner and deceased, concerning cattle and fowls. A black walnut tree is on the land of the prisoner, on

[4] As to the relative situation of the places mentioned in this testimony: The main road, spoken of by the witnesses, runs about north and south at this place; it being about a mile from the water, on the south side of the island. The three houses of the deceased, the prisoner, and Burbank's, are on the western side of the road, and a short distance out of the road. The house of the deceased is north from that of the prisoner, and Burbank's south. Opposite the house of the deceased, on the opposite side of the road, there is a road leading, in an easterly direction, to the house of the father of the deceased, who lives near the water; and another leading to the same house, which turns off from the main road, nearly opposite the prisoner's house. To go to the black walnut, spoken of by the witnesses, in proceeding south, you have to pass this last-mentioned road, leading to the father's, a considerable distance. The *barrack*, near which the deceased was found, stands between the two roads leading to the father's house, but on the opposite side of the main road; and the road from the house of the deceased to that of his father, is about one quarter of a mile nearer than to follow down the main road south, and take that opposite the house of the prisoner.

or near the line between him and Burbank.

John V. Van Pelt. Am a justice of the peace. There had been lawsuits between deceased and prisoner. On the 15th of October, there was an action of trespass between them, wherein Lake was the plaintiff. The deceased was a suitor (plaintiff), more frequent than the prisoner. The character of the prisoner is good, and he is rather peaceable and quiet than quarrelsome.

Richard S. Cary. The prisoner, on being requested by Mr. Orton to come where the inquest was held, came voluntarily, but declined answering any questions on the subject, alleging, as a reason, that he was informed that he was suspected of having killed the deceased.

Rev. Peter J. Van Pelt was called as a witness by the prosecution, to prove certain confessions made by the prisoner to him while confined in the prison in this village.

Mr. Price. Were the confessions spoken of made by the prisoner to you while you were visiting him as a minister of the gospel? I heard nothing from the prisoner but what I believed to have been communicated to me as a minister of the gospel.

Mr. Price. I object to the testimony of the witness. While I am not aware of any express decision in support of the objection, I think it is dangerous in the extreme to permit a witness, in the relation of the one offered, to divulge a communication which must, undoubtedly, have been made, and ought to have been received, in the strictest confidence. It has been decided by DeWitt Clinton, while mayor of the city of New York, that auricular confessions, made in the confidence of the church discipline, were inadmissible evidence against a prisoner.[5]

[5] On an objection raised by the prisoner's counsel to this evidence, it was decided by his honor DeWitt Clinton, then Mayor of New York, that although confessions made to a Roman Catholic priest were received in England, and no privilege could be claimed by a priest of that order in the English courts, yet, his honor considered that, in this country, we were at liberty to establish a different rule. His honor decided in favor of the privilege claimed, and that the testimony of Mr. Coleman could not be required.

The case to which the counsel alluded was of this nature: A man belonging to the Roman Catholic denomination, was brought to trial in the Court of Sessions, in New York, for grand larceny. On the trial, Mr. Coleman, a priest of that denomination, who, it appears, had previously restored to the owner the property laid in the indictment, having derived the information which led to a discovery of the goods by means of a confession made to him by one of the members of his church, was called as a witness on behalf of the prosecution, to prove that the prisoner had confessed to him the felony. By the established canons or ordinances of that church, confessions are to be made by the members at least once a year, to the priest, in private; and from the examination of Mr. Coleman, it appeared that no other confessions were made to him by the prisoner, in relation to this affair, except those made in the ordinary

I see no distinction between that and the present case. There was no good reason for restricting such a rule to any particular sect or denomination. It had no relation to the character of the person in whom confidence is placed; and whether made to a minister of the gospel, or a counselor at law, is perfectly immaterial. It arises, altogether, from the presumption, that a prisoner, for his temporal or eternal safety, considers himself compelled to make the confession. In this view, it is not to be regarded as voluntary, and therefore, is inadmissible.

VAN NESS, J. Have you, Mr. Van Pelt, any obpection to state the communication made by the prisoner? I have not.

VAN NESS, J. I think the testimony is admissible. I think there is a grave distinction between auricular confessions made to a priest in the course of discipline, according to the canons of the church, and those made to a minister of the gospel in confidence, merely as a friend or advisor.

Rev. Peter J. Van Pelt. Shortly after the prisoner had been committed to prison, he sent for me and professed to relate to me all the circumstances of his case. I visited him, and had several conversations with him, with a view of exhorting him to penitence and preparation for his great trial hereafter. The account which the prisoner gave of the unhappy transaction is, in substance, as follows: The deceased and himself had frequently disputed and quarreled, and the mind of the prisoner, by reason thereof, became harassed and disturbed. On the night preceding the affair, the prisoner was restless, and remained awake much during the night. About daylight, hearing a noise like the shaking of a tree on his land, he went to the door, and heard the noise more distinct. He went out, and ascertained with certainty, that there was somebody at the black walnut tree. This induced him to take his gun and go to the tree. When he came up, it being still dusky, he saw a man under the tree, on his knee, picking up black walnuts in a basket. Approaching, the prisoner accosted the other, by saying, "I have caught you at last." By this time he found that the man was the deceased, who made no answer, but crept or crawled away with his basket containing the nuts, through the fence between the land of the prisoner and that of Burbank. The deceased went along on one side of the fence, and the prisoner on the other, into the main road: the prisoner, following the deceased, saying, "Deliver up the nuts, and give up yourself like a man." The deceased made off very fast towards his own house, and the prisoner followed him, demanding his nuts, which the other refused to deliver. The prisoner, thereupon, made towards the deceased, resolutely, to get his nuts, but not to do

course of church discipline. According to the rules and ordinances of the church, the priest is forbidden to divulge these confessions; and the witness declared that no consideration whatsoever, not even the most severe punishment, would induce him to depart from the established ordinances of the church.

any mischief to the deceased. Whereupon deceased seized the muzzle of the gun, when, fearing that he would wrest it away, the prisoner cried out for help to his family, repeating this: "Will none of you, or, is there nobody to help me?" In the struggle, by a sudden and strong jerk, the deceased drew the band and rammer from the musket, by reason of which, the deceased and the prisoner were separated. The deceased was going off, hastily, with the band and rammer—the prisoner followed, and being angry and bewildered, he discharged the gun: but whether he took aim at the deceased, or not, the prisoner did not know.

I asked the prisoner whether he saw the deceased fall, he answered no; but that he heard deceased, as he fell, cry out, "Lord have mercy on me!" The prisoner told me that when the gun was fired he was but a short distance from deceased, and did not distinctly see him. That deceased was a stronger man. I am also of that opinion. The prisoner did not state to me that at the time the scuffle ensued, the deceased threatened the prisoner with any bodily injury. In assigning the reason why the deceased came on his premises, prisoner said he supposed the deceased intended to steal and carry away his property. The prisoner showed much contrition at having killed the deceased.

THE WITNESSES FOR THE DEFENSE

John V. D. Jacobson. I was well acquainted with the ground on which the body of the deceased was found, it being about one hundred yards from the black walnut tree, before mentioned, and about the same distance from the house of Burbank. I had known both prisoner and deceased, for many years. Violent quarrels subsisted between them, and frequent lawsuits were instituted. Prisoner seemed to be disposed to live in peace, but deceased refused to conciliate, or listen to terms of reconciliation; declaring that he would give the prisoner law, or words to that effect. During his life, the deceased was a bad man, and his wife a turbulent woman, with whom he could not live in peace. Prisoner has six daughters and three sons, some of which are small, and the whole depend on him for support. He is a peaceable man, and never had any quarrels except with the deceased and Burbank, his other neighbor; and before this transaction, I had never heard the moral character of the prisoner impeached. Have heard it said that deceased was an ill-natured, quarrelsome man, of a bad temper. The father of the deceased, owns property opposite to that of the prisoner and the deceased. The morning when the deceased was killed, it was calm and clear; and I believe that a person standing on the spot where the body was found, and hallooing very loud, might be heard at the house of Burbank, but not in one of his rooms.

Cross-examined. The road generally used in traveling from the house of the deceased to that of his father, runs between the dwellings of prisoner and deceased; and the place where the body was found, is not the direct way from the house of deceased to that of his father,

but is southwesterly. Deceased might, in going to his father's house, have taken the road in which his body was found, but it would not have been in the direct way, and would have been, and is, considerably further. I first heard of the death of deceased from the prisoner, who came and told me.

Abraham Orton. When the coroner's inquest was held I requested the prisoner to attend, and he came and staid, voluntarily until the warrant for his arrest was issued.

Mr. Wallis stated that the prisoner, in addition to the evidence already disclosed, would produce testimony to corroborate the relation made by the prisoner to the Rev. Mr. Van Pelt. A number of respectable witnesses would prove the disposition of the prisoner to be mild and peaceable, and, finally, it would be contended in his behalf, from authority, that under all the circumstances of the case, he ought to be acquitted by the jury.

Patience Smith. Am a daughter of the prisoner and am seventeen years old. Early in the morning in which the deceased was killed, and when it was quite light, father asked mother for his great coat, which he got, and said he was going out to see who was threshing off his black walnuts. I followed him for a short distance, and then returned to the house. Shortly after I heard him call for help, six or seven times, or more and also heard a sound like the violent trampling of feet, and the jingling of a chain, and soon after the report of a gun. Heard father, during the affray, demand his property of the man who was near him, whom he frequently called by his surname, but who refused to give it up. I think that at the time the prisoner was at the walnut tree, I must have been at the house, and was there when I first heard him cry for help. Deceased was a little west of my father's house, and came out into the road near the walnut tree. During the most of the time that I was present I saw the deceased pulling and dragging my father along with him, who resisted; and the course which they took brought them nearly opposite to, and westward from father's house. I was in the road when I heard the gun discharged. I did not know father took the gun when he left the house.

Cornelius Perine, George W. Barnes, Reuben Clason, Dennis Denyse, Peter Jacobson, John B. Coles and *Isaac Coverly,* on being sworn as witnesses on behalf of the prisoner, concurred in showing the general good character of the prisoner, and that he was a peaceable, good-natured man.

Mr. Phoenix commenced the summing up for the prisoner, and *Mr. Price* closed.

They contended that if he suspected that the deceased was committing a felony, though, in fact, no felony had been committed, but a trespass only, and if, upon his attempt to arrest the deceased he resisted and fled, whereby the prisoner

could not secure him without shooting at him, he had a right to do so; and, if he was killed in his flight, the prisoner was justified in law. It was almost impossible that the prisoner could make the legal distinction between trespass and felony, with which scarcely any person but a lawyer, read on that subject, could be acquainted. With regard to the principal intention and motives of the deceased, they were precisely the same as that of a felon, and if the jury should draw the conclusion that the prisoner suspected and believed that the deceased had committed a felony, in taking the nuts, it was their duty to acquit him. There could be no doubt that the prisoner entertained that belief; that the conduct of the deceased was like that of a thief; he broke into the prisoner's enclosure in the dark, before daylight—was detected in the act of taking the prisoner's property—and when he found himself discovered, crept between the panels of the fence, bearing off his booty, notwithstanding he was frequently requested by the prisoner to give it up, and surrender himself a prisoner. That the gun was taken by the prisoner to be used in defense of himself and property, as necessity should require, was manifest; for, had the prisoner taken the gun with an intention of killing the deceased, he would have discharged its contents when he first came up to him; inasmuch as the opportunity afforded certain success, while the deceased was in the act of stooping down and picking up the nuts. But it was not until after a struggle had taken place and the prisoner was nearly overpowered, and crying for help, nor until after the deceased had attempted to fly, and while in the very act of flight, at a distance of 20 or 30 yards, the prisoner fired a random shot which unfortunately deprived his neighbor of life.

Mr. Lester for the prosecution contended, and the COURT charged the jury, that the evidence would warrant a finding of guilty; but upon that subject they were the judges of the law and fact; but the COURT could not forego advising them, that the evidence afforded the prisoner no chance of escape; his conduct before and after the commission of the crime had been

brutal and barbarous in the extreme; and he was not a safe member of society.

The jury returned after seven hours with a verdict of NOT GUILTY.

Judge VAN NESS. Christian Smith, you have been tried and acquitted by a jury of your country, for having taken away the life of one of your fellow creatures. I mean not to censure the jury who acquitted you—it is not my province so to do; I hope they will be able, upon future consideration, to reconcile their verdict to their consciences. But I should feel myself wanting in my duty as a man, if I did not express my opinion that, notwithstanding their verdict, I consider you a guilty—a very guilty man. Upon an ancient grudge, you considered yourself justified in doing what you have done; and the jury have, I fear, confirmed your false and fatal judgment. But, beware—you have not yet escaped. Believe me, your most awful trial is yet to come. You are now an old man, and your days must be few in this world, and you will shortly be compelled to appear before another court where there is no jury but God himself. Unless you repent, and devote your future life to an humble atonement of your guilt, your condemnation there is certain. I am thus plain with you, in order that those who have listened to your trial, may learn that whatever may be considered to be the law of Staten Island, your conduct is unjustifiable in the sight of God and man.

THE ACTION OF JOHN M. TRUMBULL AGAINST THOMAS GIBBONS FOR LIBEL.

NEW YORK, 1818.

THE NARRATIVE

A husband has a quarrel with his wife, they separate, the son-in-law who takes the part of the wife makes himself particularly obnoxious to the husband, who, in revenge, and to force the wife to return, prints a pamphlet containing gross libels on the son-in-law which he sends to the wife, telling her that he will distribute them to the world if she does not return. The outcome is a suit for damages. The parties are in high life in the East and South and both bear historical names. The counsel are all eminent in their profession and the jury return a verdict against the defendant and assess the damages at $15,000.

THE TRIAL[1]

In the Supreme Court of New York, June 1818.

HON. AMBROSE SPENCER[2] *Judge*

This was an action for damages for a libel, the damages being laid at $100,000. The declaration alleged that the defendant, Thomas Gibbons, did on September 19, 1816, in the City of New York, maliciously compose, print and publish a libel against the plaintiff.

It appeared that Gibbons and his wife had been separated for some time and that the plaintiff Trumbull was the son-in-law, having married Gibbons' daughter against his wishes. As

[1] New York City Hall Recorder, see ante p. 61.

[2] SPENCER, Ambrose. (1765-1848) born Salisbury, Conn. graduated Harvard 1783. Member New York Assembly 1793. State Senate 1795-1802. Atty. General 1802-1804. Justice Supreme Court 1804-1819. Chief Justice 1819-1823. Mayor of Albany 1824-1826. Member of Congress 1829-1831.

a consequence of much bad feeling Gibbons wrote a long letter to his wife charging Trumbull with various crimes and which he printed in pamphlet form and circulated. In this he charged the plaintiff with being a swindler, borrowing money and not paying it back, that he had ingratiated himself into his favor through his daughter whom he had seduced in her own home.

June 24.

The trial began today and extended over two days.

D. B. Ogden,[3] *Hoffman* and *Wells*[4] for Plaintiff.

Emmett[5] and *Griffin*[6] for Defendant.

Mr. Ogden. The case is without precedent in the annals of our jurisprudence. The action was brought for a libel contained in a printed pamphlet the most scandalous, indecent, and impious that could be framed. It was published by the defendant against his son-in-law, and his own daughter who had since descended to the grave; and if every word in the publication were true, the defendant was a monster—nay worse than a savage—he deserved the execration of every person in a civilized society, not lost to every feeling of humanity, for giving publicity to such a daring and atrocious libel. For had the daughter, previous to her marriage, been guilty of indiscretions and failings, the father ought to have been the last person to have proclaimed them to the world. But, it will appear that so far from the publication being true, the defendant has confessed every word and sentence to be utterly false. Without attempting, at this stage of the case, to enlist the feelings of the jury by entering into a detail of the abominable conduct of this defendant, we shall proceed to the evidence.

Mr. Ogden produced a printed pamphlet with a paper, con-

[3] See Mazarra's Case, ante p. 60.

[4] WELLS, John. (1770-1823) born Brooklyn, N. Y. graduated Princeton. Member of New York Bar from 1791 to his death.

[5] See Mazarra's Case, ante p. 60.

[6] GRIFFIN, Ebenezer. (1789-1856) born New York City, graduated Union College. Admitted to the Bar 1811. Practiced in New York City in 1842, when he removed to Rochester. One of the best known advocates of his day.

taining writing attached thereto, directed to Mrs. Gibbons; and in different places on the margin of the sheets, writing was introduced, intended either as additions to, or explanations of, the printed matter in the body of the book.

WITNESSES FOR PLAINTIFF

Elias P. Dayton. The writing produced is that of defendant. In the year 1816, and since that time, plaintiff and defendant were near neighbors to each other at Elizabethtown in New Jersey.

Mr. Ogden read the whole publication, which occupied more than an hour. He omitted, however, in the reading, some things which were stated in relation to third persons.

THE DEFENSE.

Mr. Emmett. There are three grounds of variance between the declaration and the publication read in evidence. 1. In the declaration, the publication is described as a *printed pamphlet;* but it appears to be partly written and partly printed. 2. In the body of the publication there is a mark of reference; beneath which, on the same page, there is a note. In the record, the matter contained in the note is introduced as a continuation of the matter in the body of the work at the point of reference. 3. Plaintiff, in framing his declaration, has selected certain portions of the pamphlet, omitting a part, and without any introduction at the several points of omission, he has inserted the whole as one continued quotation; whereas, he should have inserted at the commencement of the matter immediately following the part omitted, words to show that such omission had been made.

SPENCER, *J.* With regard to the first objection, it relates merely to the description of the libel; and that whether written or printed, is, in the opinion of the court, immaterial. The second and third objections resolve themselves into one; and the substance of the objection to the declaration seems to be, that the juxtaposition of the matter was improper. Now plaintiff had undoubtedly a right, as in this instance, to select such parts of the libelous matter as he judged proper, and omit the rest; and though after the several breaks or omissions,

it was usual to preface the succeeding matter in the declaration with words importing that an omission had occurred, I do not conceive this to be necessary. The several objections taken are not tenable.

Mr. Emmett. We bow with respectful deference to the opinion of the court, but beg leave to tender a bill of exceptions to the opinion.

Mr. Griffin. This is one of the cases in which the truth of that remark, that unbounded wealth does not produce happiness, is abundantly verified. The parties in this case previous to the time of the commencement of this controversy, lived at Elizabethtown in New Jersey. Mrs. Gibbons, the wife of the defendant, was in Georgia; and though there had been some kind of arrangement concluded, that the plaintiff should go and accompany his mother-in-law on a visit to Elizabethtown, in the summer of 1816, yet, by reason of some difference between the plaintiff and defendant, he was expressly enjoined and prohibited by his father-in-law to go to Georgia for that purpose. Notwithstanding this, preparations were secretly made by the plaintiff, and he departed without the knowledge of defendant, and brought on the wife to Elizabethtown. Here is the prime cause of all this difficulty. Though the wife of defendant, on her arrival, went to his house, yet in a short time she left it, and went to reside at the house of her son-in-law. She separated herself from her husband; and through the countenance and support of the son-in-law, measures were devised between them for a divorce from her husband; and the son-in-law accompanied her to a professional man in that State for advice and direction on the subject. Defendant took a part of his family in his carriage and went on to Saratoga Springs, where a portion of this publication was composed. From thence he went to Boston, where it was finished, and a confidential printer was engaged under an injunction of secrecy to print fifty, and to return the proof-sheet and the manuscript carefully to the defendant. This was done; and on his return to New York, he enclosed five to his wife in an envelope, endorsing four of them to her most confidential

friends. It was intended, however, by him as a confidential communication to his wife; and the object of printing it was to terrify her into a compliance, and to bring her back to her family. It produced the effect; but she having delivered two or three copies to the plaintiff, he delivered them to those persons to whom they were directed. He was, therefore, the publisher, and the only publisher of that libel on which the opposite counsel had been so lavish of opprobrious epithets; and for which they modestly required at the hands of the jury enormous damages. The libel, it is true, was highly improper; nor would he attempt its justification; but would contend that under the circumstances of this case, which would be more fully disclosed in testimony, plaintiff alone ought to be considered responsible for this publication.

It will further be shown, that after these pamphlets had been distributed by plaintiff, an amicable adjustment of differences between the parties—a family compact—was entered into, through the mediation of William Gibbons, plaintiff's brother-in-law; and the prominent terms of that compact were, that those pamphlets should be taken up by plaintiff, and that his children, in the will of the defendant, should stand on the same footing with the rest of the family; and all past differences between the parties were to be buried in oblivion. Notwithstanding this solemn arrangement, entered into by defendant with good faith, an agreement which ought to have been held sacred, because family discord, whatever may be its origin, ought never to be made public unless required by the most imperious circumstances, defendant, on coming to this city, was arrested at the suit of plaintiff, and held to bail in 100,000 dollars.

William Gibbons. In August, 1816, I went in a carriage with my father, the defendant, and one of his other sons with his lady, from Elizabethtown to Saratoga Springs, leaving my mother at the former place in the house of plaintiff. Her staying there was contrary to the wishes of father; and plaintiff previous to the tour to Saratoga, had accompanied mother to Mr. Stockton, a lawyer at Princeton, for professional advice relative to a divorce which was contemplated between father and mother. Whether plaintiff advised mother thus

to proceed, I do not know. About one third of the pamphlet was written at the Springs; and from thence defendant, with his company, went to Boston, where the remainder of the publication was written, and I was sent by father to a printer, who engaged with him to print fifty, enjoined him not to make it public, and required him to return the manuscript and proof sheet. This the printer did, and delivered fifty copies to me, and the manuscript and proof sheet. Shortly after this, the company left Boston for this city, where they arrived on the 17th of September; and I was called on by father for five of the pamphlets. Father wrote "Mrs. Gibbons" on one; on the second, "Col. Aaron Ogden," on the third, "Mr. Stockton," the wife's counsel, on the fourth, "John Haywood," and on the fifth, "Mrs. Glover." The whole were then enclosed in an envelope and directed to Mrs. Gibbons, and I lodged them in father's trunk, retaining forty-five of the pamphlets myself; none of which have been since exhibited to any other person, except two, for the use of the counsel on the trial. Arrived at Elizabethtown on 21st September, and shortly afterwards a compromise was effected between father and mother, through my intervention, and she returned home. At this time plaintiff was absent at Princeton to consult Stockton relative to the business of separation; and on his return, I was sent to request Trumbull to come and see mother. When he came, she stated to him that she had come to a compromise, in which all the members of her family were included; and that the principal reason of her acceding to the terms of compromise was for the sake of plaintiff's family. The foundation and terms of the compromise were stated by her to be, that Trumbull should take up the pamphlets she had delivered to him for Messrs. Stockton and Ogden; and on the side of defendant, he was to place Trumbull's children on the same footing with the other members of the family in relation to the final disposition of the property; and all differences were to be buried in oblivion. Plaintiff acceded to this, and promised to take up the pamphlets as mother requested. She told Trumbull that what she had done was perfectly voluntary and for the sake of her family. On October 6th she departed from Elizabethtown for Savannah, in company with me, in pursuance of a previous arrangement; and the second day afterwards, I received a letter from plaintiff stating that he had received three of the pamphlets, two of which he delivered according to their direction, and apologizes for not taking them up. This letter bore date on 26th September. The reason why father did not accompany mother to Georgia, I believe, was, that he was indicted by Mr. Ogden in New Jersey, and was also bound in a recognizance, to the amount of 5,000 dollars, in another proceeding in that State, in which Trumbull was a party.

My father was arrested in this city October 1st, previous to which, no conference had taken place between plaintiff and defendant. But mother, after the arrest had an interview with Trumbull, wherein she spoke in pointed terms of repre-

hension of that proceeding; told him he had made a very improper use of the pamphlets, and conjured him to discontinue the suit, which he refused to do, saying that he had a right to make use of the pamphlets to vindicate his own character.

In consequence of an arrangement made by mother at Elizabethtown, I had an interview with plaintiff at the office of Mr. Ogden, one of his counsel, in New York, for the purpose of effecting a compromise. There I asked plaintiff whether a full recantation of all the charges in the publication would be satisfactory, to which he answered, that something more was necessary—but did not say what. I staid a few moments only at the office, and then departed. At this time, and at several other interviews which were had with plaintiff, the following year, for the purpose of effecting a settlement, I was clothed with full discretionary powers, subject, nevertheless, to the ratification of father.

After my return from Savannah, I again called on Trumbull to make a settlement: but he refused. In the spring of 1816, I was in Georgia, at which time Trumbull came there for the purpose of bringing on his mother-in-law to the north, who had received an invitation the preceding winter to come on. At the time Trumbull arrived, I did not know of the difference which existed between father and Trumbull; but he stated there was a difference, and in a few days afterwards I received a line from father advising me against Trumbull's bringing on mother. She came on with him, however, sometime in May, and, afterwards, on my arrival at Elizabethtown, I found that a separation had taken place between my parents; mother then being at the house of plaintiff, who accompanied her often to Stockton for advice concerning a divorce.

Cross-examined by *Mr. Ogden.* When Trumbull came to Georgia to bring on mother, and after he had stated the difference between father and himself, she called on me for advice, and I advised her to go on with Trumbull and make up the difference. At the time of the compromise, before the commencement of the suit, it was understood that mother was to return to Georgia, and all past differences were to be buried in oblivion. But father had required, as a condition of his forgiving plaintiff for producing the separation, that he should take up the pamphlets.

Samuel Dawes. In the spring of 1816, being in the employ of plaintiff, and living a short distance from him, he sent me for a wagon to carry himself and his baggage to the place where he was to embark for Georgia; and on the way Mrs. Trumbull requested me to conceal the trunk by covering it; and the husband directed me not to disclose to any persons that he, plaintiff, was gone. Previous to this, he had told me that he was to go to Georgia by the advice of defendant.

WITNESSES FOR PLAINTIFF

Rev. John M'Dowell. Testified to his general good character from an acquaintance of three years.

Cross-examined by *Mr. Griffin.* Plaintiff handed one of these

pamphlets, which had been sent to Mrs. Gibbons, to me. I lent it to a Mr. Wilson, and afterwards suffered Shepherd Collins to peruse it, but did not leave it in his possession. At the request of Mrs. Gibbons, I enclosed it and put it into the post-office, directed to William Gibbons, New York. On or about September 21st, 1816, there was an interview between the plaintiff and defendant, at my house, at the instance of the old lady, but without effect.

Isabella Post. In 1816, the wife of defendant being at the house of Trumbull, defendant asked me why I did not go there and assist his wife in attending Trumbull's children, who were then sick.

David Trumbull. Am plaintiff's father. At different times, on the request of my son, I have had conversations with defendant on the subject of the differences.

Mr. Ogden. Did defendant state to you in any of these conferences that he did not believe the things contained in that pamphlet to be true? He said that he wrote and published the pamphlet with a view of driving his wife out of the country, as she had been brought there without his consent by plaintiff. Defendant further said, that he could not substantiate the facts; and expressed a willingness to make an apology, and even went so far as to offer to sign any acknowledgment which my son's lawyer would write, but was not willing to touch the purse. These conversations took place between the 20th of October and the 1st of November, 1816. There were about a dozen interviews between defendant and myself, in none of which did he mention anything about money to be advanced to my son, as the basis of settlement; but I did suggest to defendant, that he ought to provide for his children; to which he replied, in effect, that it was the privilege of every man on his death-bed to make such a will as he pleased: and he further said, that he had already given plaintiff $50,000. In some or one of these interviews defendant said, that if his son-in-law would make an acknowledgment that he had brought on his mother-in-law from Georgia without defendant's consent, and also withdraw the suit against him, he was willing to place his children on an equal footing with the other members of the family. There were five specific subjects of complaint made by defendant for which he required an acknowledgment from Trumbull. 1. For his going to Savannah and bringing on the wife contrary to his express prohibition. 2. When she arrived, carrying her to see Colonel Ogden. 3. Going to Stockton to procure a separation. 4. Detaining her under his roof. 5. Retaining the pamphlet and not delivering it up.

At the first interview I had with defendant on this subject, and also in other conversations, he asked me whether I knew the oath he had taken; to which I answered no. He said, he had sworn on the holy evangelists to an oath, which he exhibited in writing, and read, that if this controversy was not settled by Trumbull, he would take his life and also that of Colonel Ogden and the Rev. Mr. M'Dowell; and he also declared that if I went on my contemplated journey to

Connecticut, before the affair was settled, the first news I would hear would be that of my son's death. Knowing the defendant's disposition, I was not under the least apprehension that these threats would be carried into effect; though I believe from the circumstance of the writing, that the oath was taken. Defendant further said, that it was useless for plaintiff to contend with him; for that money had carried him through thus far, and it would do so hereafter. He further said, that it was a matter of indifference to him whether he died on a gibbet or on a bed of roses.

William Gibbons. Out of the five pamphlets sent to mother three of them were taken up or returned, so that at present there are only two out; the one to John Haywood, and the other to Aaron Ogden. At the time the pamphlets were about being printed, I compared the manuscript with the printed copy, and otherwise assisted as father's agent.

Mr. Ogden handed the witness a letter, dated March 5, 1810, and asked if that was his father's handwriting. Being answered in the affirmative, counsel read it to the jury.

The letter was written from Savannah to John Haywood, stating that John M. Trumbull, of Connecticut, belonging to that ancient family celebrated in the American history, and concerning which so much had been said in the newspapers, had made suit to Ann: that all the parties were satisfied, and that their marriage was to take place in his house at a particular time stated in the letter. The correspondent, by the terms of the letter, was invited to attend the wedding.

William Gibbons. In the fall of 1816, at the request of father, I was present at an interview wherein defendant reminded plaintiff that when he was about being married defendant called him up and told him, that as he married without his consent, he, the defendant, would not give him a single cent. The plaintiff at that time did not deny this, but nodded assent. Defendant has given the children of Trumbull property valued at between $45,000 and $50,000, for a part of which I am, with others, a trustee named in the deed for property at Elizabethtown, given by defendant for the benefit of Trumbull's wife and children. Besides this, defendant had frequently advanced to plaintiff small sums of money.

David Trumbull, (recalled). Plaintiff lent one of the pamphlets to one M'Callister, a relation.

Elias P. Dayton, (recalled). In a conversation I had with defendant in relation to the value of his property at a time when rice was worth $3 a hundred, he said his annual income was $52,000. At the present time rice is worth $6 a hundred.

Luke Tucker. Defendant was at home when plaintiff offered to sell witness the farm on which he lived. Defendant sent witness to plaintiff with word, that if the present suit was carried on, he need not expect anything for his wife and children.

Joseph Trumbull. Was present two or three years ago at a trial in Newark, between Trumbull, the plaintiff in this suit, and one Jonathan Dayton, wherein counsel for Dayton was about calling on the present de-

fendant as a witness, to prove that Trumbull had rifled Miss Dayton's drawers, but defendant then declared, in open Court, that Dayton could not prove that fact by him.

This evidence, with the other in the progress of the trial establishing the falsity of the charges contained in the publication, was objected to by the *counsel for the defendant,* on the ground that the plaintiff had not attempted to justify, and the libel, in legal intendment, must be considered false. The COURT admitted the testimony to go to the jury, because they might suppose, in the absence of all testimony, that it was out of the defendant's power to prove these charges, which might, nevertheless, be true.

THE ARGUMENTS

Mr. Griffin for the defendant, contended, principally in mitigation of damages, that this publication, whatever may be its character, was written by him under a high state of provocation. It never was intended for the public eye, but was designed to terrify his wife, and bring about a reconciliation. This was manifest, as well from the intrinsic nature of the work as from the mode adopted by him in transmitting it to her. The parade of printing was made for the purpose of showing her that he intended to distribute the publication far and near, unless she abandoned her design of obtaining a separation, and returned to her own home. The very essence of a prosecution for a libel was its publication; and in this instance the plaintiff himself was the publisher. The solemn family compact which was entered into by plaintiff, through the influence of his mother-in-law, ought to have been held sacred. Having violated it, it is manifest that plaintiff's sole object in persisting in this suit is money. Above all, when the father submitted, whatever injury he may have inflicted, whatever may have been the extent of his wrong, the son, with open arms of reconciliation, should have forgiven.

I raise a question of law for the court, whether this action is properly brought in this court, inasmuch as both the parties are residents of a foreign State, and the publication, if any was made by plaintiff, was effected without the jurisdiction of this State.

SPENCER, *J.* This was a transitory action, and in my

opinion, was well brought. In the case of Glen v. Hodges,[7] a case recently decided in the Supreme Court, it appeared that a slave, belonging to the plaintiff, having run away from this into the State of Vermont, was about being reclaimed and brought back by the plaintiff, when the defendant rescued the slave under color of an attachment issuing from one of the courts in Vermont. An action of trespass, *vi et armis*, for rescuing the negro, having been brought by the owner of the slave against the defendant, *in this State;* on an objection to the jurisdiction, it was held that for injury to the *personal* property or *personal rights*, which are of a transitory nature, an action may be brought wherever the defendant is found.

Mr. Emmett. It is proved that one part of this publication was composed at Saratoga Springs and the composition was finished at Boston, printed by a confidential printer there, and then brought to this city. Now in the case of Baldwin v. Elphinston,[8] it was held by Chief Justice DeGrey, that "printing a libel may be an innocent act; but unless qualified by circumstances, shall *prima facie*, be understood to be a publishing. It must be delivered to the compositor and other subordinate workmen. Printing in a newspaper admits of no doubt upon the face of it. It shall be intended a publication unless it be shown that it was suppressed and never published." According to that authority, the mere delivery of even a newspaper publication to the compositor, was not a sufficient act of publication. In the case now before the court, whatever may be alleged as to the *printing* in Boston, there was certainly no *publication* even in that place. The five pamphlets, after they were brought to this city, and while *in transitu* to their place of destination, were taken from the others, and enclosed in an envelope to the wife. In this there was certainly no act amounting to a publication within this State; and whether this was a subsequent publication in the State of New Jersey or not, for the purposes of this branch of the argument, was immaterial. Again; the pamphlets passed from the hands of the defendant to one who stood in the relation of a wife. Had

[7] 9 Johns. 67. [8] 2 Sir William Blackstone 1037.

he read to her in confidence the matter contained in the pamphlets, this surely could not amount to a publication; and except from the mere act of delivery, no act of publication whatsoever could be imputed to the defendant. I therefore contend, that there has been no act of publishing within this State, on the part of defendant; and in the second place, that plaintiff himself was the publisher. The plaintiff, therefore, should be confined to the jurisdiction of New Jersey. It had been decided by the Supreme Court, in the case of Gardner v. Thomas,[9] that an action of assault and battery, brought by one of the subjects of Great Britain against another for that offense, committed on board a British vessel on the high seas, ought not to be sustained in the courts of this State. In Mostyn v. Fabrigas,[10] decided in the King's Bench, which is a leading case, it was decided that false imprisonment lies *in England* by a native *Minorquin* against a governor of *Minorca,* for such injury committed by him in Minorca; but the principle upon which the decision was grounded is this, that if a contrary doctrine prevailed, there might be a failure of justice: and the courts in England have sustained actions of that description on the ground alone of necessity. The retention of a case of this description in our courts rests in the sound discretion of the court, and according to the peculiar circumstances of this case, plaintiff ought to be sent back to litigate in the appropriate tribunal of his own State. The great question in this case is whether the jurisdiction and sovereignty of an independent State are to be invaded and rendered subservient to another; and there is no reason why the same rule should not prevail in relation to a suit brought by a citizen of a foreign State against another, for a cause of action wholly arising in such State as was adopted by the Supreme Court, in the case of the British subjects on board British vessels prosecuting in our courts of judicature.

SPENCER, J. Whether there was a publication, according to the existing facts in this case, is a question of law, in deciding which, I shall lay out of view, as well the act of partly writing

[9] 14 Johns. 134. [10] Cowp. 161.

the pamphlet in this State, as the act of sending the pamphlet from this city. The delivery of the manuscript to the printer at Boston, and also the permission or direction to the son, to compare the manuscript with the printed copy, were, in the opinion of the Court, sufficient acts of publication to support the action In the case of Gardner v. Thomas, cited by defendant's counsel, it was decided that on the great principles of commercial policy, an action ought not to be sustained by one British subject against another for an injury committed on board a British vessel on the high seas: but in that case, the Court expressly say that they have a right to retain such an action and that this rests in sound discretion. But in the case of Glen v. Hodges, the question was expressly decided. The mere delivery of these pamphlets to the wife in confidence, unaccompanied by any direction to her to distribute them, would not amount to a publication; but it is sufficient for the Court to say, on this question, that there was, at least a technical publication of the pamphlets at Boston.

Mr. Emmett (to the jury). It is your duty on this occasion, to inquire into the acts of the parties, and to develop their motives. We bow with respectful deference to the superior intelligence of the Court—it is our duty; and I freely admit that plaintiff had a right to commence this suit in this State; but I ask why did he so—why fly from the jurisdiction of his own State to lay his claim before a New York jury? The great object was *money*. Instead of applying to the *vicinage*—to a tribunal where all the parties were known, and where their relative claims could be duly appreciated, he comes to this city, because, forsooth, a New York jury, with passions inflamed, would give more liberal damages than his own neighbors. And how does he appear before us? By his counsel this atrocious libel is read; and, instead of confining himself to the matter spread on the record, he unnecessarily drags in the whole of this extraordinary production before the jury, and deliberately reads the scandalous accusations against his deceased partner. When I heard this, my heart sickened within me; I was disgusted at this shocking spectacle of fam-

ily discord. The son-in-law seeking to raise the passions and excite the feelings of a jury of strangers by the immolation of the mother of his own children—seeking to blacken the character of the father-in-law, by the degradation of his own family. What, if on our part, on this occasion, we had thus unnecessarily required all the facts in this production to be spread before the jury and the surrounding audience? Then, indeed, we should have furnished a theme of just reprehension, on which the learned counsel would, no doubt, have lavished all the thunder of their eloquence. And yet the jury are by and by to be told, that this heart-broken plaintiff is to be remunerated for injured feelings, and for the loss of reputation by enormous damages; but I hope that the means employed in bringing this action, and the artifices resorted to on this occasion would recoil on the head of the plaintiff. Admitting, at present, that this publication is utterly wrong, and I shall not attempt to justify it, still, I shall presently endeavor to show you that there was not such a publication, through the intervention of defendant, as justified any claim to damages. The wife of defendant, after her return to her own family from that of plaintiff, sought a reconciliation between the husband and all the members of her family. She did this for the sake of the children of Trumbull, who was then absent consulting counsel, and endeavoring to procure a separation. He arrives, and after finding that a reconciliation had been effected, he enters into the arrangement, and promises to take up the pamphlets which he had distributed. Almost immediately afterwards, he comes to this city and holds his father-in-law to bail in $100,000. The compromise would have redounded to the benefit of his own children—why then was this extraordinary prosecution commenced? Why but to gratify the avarice of the plaintiff —to make a speculation on, or to extort from, a father-in-law, and to put in his own pocket the patrimony of his own children? Thus this arrangement, made in good faith on the part of the defendant, in which all his grandchildren were to be placed on equal grounds in the future disposition of the property, is frustrated, and this solemn family compact, which

was calculated to heal past difficulties, and bury all dissentions in one common grave, is set aside and disregarded. Had plaintiff not been actuated by sordid motives—had he cherished the least regard for his children, or for the memory of his departed companion, would he not, at least, have met defendant when he extended the hand of reconciliation, and have endeavored to place those children in the affection of their grandfather?

It cannot be concealed, and it will not be denied, that the defendant did wrong; but he was willing to make ample atonement. He made offer after offer; he was anxious that this affair should be compromised; he spared no pains to conciliate and prevent a public disclosure; and in the offer to execute any retraction, any acknowledgment, that plaintiff's counsel should dictate, he did more, perhaps, than ever such a father did towards such a child. But the son-in-law was inflexible: he saw the father of his departed wife and the grandfather of his own offspring—him, on whose bounty he had fed and fattened, submitting, in a manner, without example, but *his* pride would not suffer *him* to acknowledge that *he* had done wrong. When the five specific subjects of his wrong were presented he refused to submit, and meet the father in the open field of conciliation. He would not even acknowledge that he had been to Savannah for unwarrantable purposes. This step was manifestly wrong, as the event has justified, and the acknowledgment was not unreasonable. But we find him rejecting all overtures of accommodation, and persisting in a claim for heavy and vindictive damages. Such a claim under the peculiar circumstances of this case ought to be discountenanced by a moral and discreet jury, whatever may have been the conduct of the defendant. When the wife was brought by the plaintiff from Savannah, she went to the house of her husband. She had not long remained there before a separation was contemplated, and through the countenance and advice of the son-in-law, she leaves her own abode, and measures are taken to consummate this separation by a disgraceful proceeding at law. The wife had not long abandoned

the roof of her husband, before the talisman of conjugal fidelity was broken, and other enchantments soon succeeded.

Gentlemen, age blunts our feelings; and, perhaps, the defendant, at his season of life, long after the headstrong passions of youth had subsided, and when the cool suggestions of a calculating prudence predominated in his mind, did not think of this serious injury as he once would; but I beg of you to imagine to yourselves the situation to which either of you, even at his advanced period of life, would be reduced, to have a partner for forty years, the early companion of your bosom, to be separated from you by a son-in-law, and measures taken by him for a divorce by a disgraceful process of law.

But you will presently be told by the learned counsel, that this publication is disgraceful to humanity; and its most odious features will be presented in their most glaring deformity, for the purpose of exciting your indignation against the author. And it will be insisted, that the printing of the work is evincive of a cool and deliberate system of mischief. But, gentlemen, the facts in this case will warrant me in saying, that the defendant fell on this plan as an expedient to accomplish a specific purpose. He believed that, rather than have the matters contained in this pamphlet published to the world, his wife would abandon the design of a divorce, and return to her own home. This thing was, therefore, conceived and executed but as *in terrorem*, and all the parade of printing was but a part of the same plan. From the intrinsic nature of the production, he never could have intended that it should be made public; and if he did not intend a publication, then the aggravating circumstances of printing, upon which the gentleman will descant, loses all its force. But if the essence of a libel is its publication, and if it was a crime wantonly and unnecessarily to publish the one now under consideration, it can not be denied but that the conduct of the plaintiff himself is far more reprehensible than that of the defendant. Technically, and as the court has been pleased to decide, sufficient for maintaining this action, there had been a publication. The defendant published this libel to his own son; but the plaintiff

who had the power of arresting it in its progress, and entirely preventing its circulation, having the whole under his own control, presented it for inspection to his neighbors, and it thus acquired publicity by being handed from one to another.

Shall the defendant, therefore, be punished in damages for that which the plaintiff himself did? And can *he* who instructs counsel unnecessarily to spread and perpetuate on the record, and read in open court, matters concerning his deceased partner, which ought never to have been disclosed, and which were never intended by the author to meet the eye of any human being except his wife, speak of a libel on female character? Shall *he* be allowed to recover damages as the husband of *that* wife and the *father of those children*, when he has dishonored the memory of the one, and fixed an indelible stigma on the character of the others?

The defendant permitted his son only, as his confidential agent, to see the work; and there was merely a technical publication in the town of Boston, among a community of utter strangers. This, I strenuously urge, is entitled to no more than a technical reparation in damages. The Court has said that the mere delivery of a libel to a wife in confidence, would not amount to a publication sufficient to support an action; and I insist that the delivery by the wife to a third person, without the direction of the husband, would not be actionable, though it might be the subject of a criminal prosecution against the husband. I think, that in this prosecution, from its inception, there are features of depravity in the conduct of the plaintiff, which I have scarcely, if ever, witnessed; and notwithstanding the plaintiff hopes from the seed of this libel to reap a plentiful harvest of money, he should be instructed by the wholesome verdict of the jury, that he who sounded the trumpet of fame to the infamy of his own wife and children was entitled merely to a nominal compensation in damages.

June 25.

Joseph P. Shelton, one of the jurors, having been taken ill at the conclusion of Mr. Emmett's speech and the COURT hav-

ing adjourned until morning. On the opening of the Court, it was stated to the COURT that the juror was unable to attend the trial, and the parties executed a stipulation in writing, that the verdict rendered by the eleven jurors should be of equal validity as if delivered by the twelve.

Mr. Ogden (to the jury). It has been insisted on the part of defendant, that the publication was the result of sudden exasperation; but the jury will perceive, that from the length of time necessarily employed in the composition, that it was the result of cool and mature deliberation. He commenced it at Saratoga Springs, and finished it at Boston. As to the publishing, it was shown to his son, and the son's daughter, the atrocity of which publication to these members of his own family was a crime against the laws of nature. It was shown to the printer, and to how many more by him was uncertain; and although it had been said that fifty only were printed, yet it was impossible to say what extent of circulation had been given to the pamphlets in Boston. There was also a publication in this city, on the 19th of September, by dating, signing, and directing those pamphlets to persons in New Jersey. If defendant did not intend to publish the pamphlets, why did he procure fifty to be printed? It was undoubtedly his object to drive the wife from the house of her son-in-law, and if that plan failed, defendant intended to give the pamphlet publicity.

We are asked, why did the plaintiff fly from the jurisdiction of his own State, and commence his action in this city. At the time the action was commenced, it was believed that defendant was on his way to Georgia; and even had this not been the case, as the plaintiff had the choice of his tribunal, he acted judiciously in commencing his action where the jurors were to be selected by lot, and not, as in New Jersey, by the sheriff. Here the influence derived from the overgrown wealth of the defendant could not avail him, as it might in his own State.

The motive of the defendant in writing this abominable libel, was to drive his wife from the house of her son-in-law,

and to send her into exile in the State of Georgia: and this effect actually followed. There were powerful motives, no doubt, which induced her to apply to the law for redress. She went to the house of Trumbull by the consent of her husband, and for the laudable purpose of attending the sick children of her daughter; and the very motive which the opposite counsel assign for procuring the separation of the mother from her daughter, and the only friend she had in the northern country, shows their client to be utterly destitute of the common feelings of humanity.

The principal ground of extenuation was, that plaintiff, without defendant's consent, went to Savannah and brought on Mrs. Gibbons; but she had been previously invited to come on; a previous arrangement had been made that the son-in-law should accompany her; and when he arrived at Savannah, she came on with him through the advice of her own son.

The libel had not been looked into by the opposite counsel; this would not do; and by not attempting to justify, they admit every sentence of the pamphlet false. Admitting that defendant had cause for libeling the son-in-law, this affords no justification for sitting down deliberately and framing this atrocious libel against his own wife and daughter.

The compromise, the great family compact, on which so much stress had been laid, was not established, except by one who was a *particeps criminis* in this infamous publication; who was directly interested in the event of this controversy, and whose conduct throughout the whole transaction is very reprehensible. Admitting his statement to be correct, it does not appear that plaintiff agreed to do anything more than take up the pamphlets, which he had done, as far as was in his power. There never was a publication written, more immoral, indecent, and almost blasphemous, than this; and it is admitted to be false, and much of it is actually proved so.

The object of the plaintiff in this prosecution, the counsel avow to be *money*, as the only means by which defendant can be punished, and the patrimony of the grandchildren secured. Damages should be awarded as a compensation to plaintiff, and

as a punishment to defendant; and they should be proportionate to the extent of the injury, and to the overgrown wealth of defendant; for a sum in damages which would ruin a man of moderate fortune, would not be regarded by defendant. It is your duty and your privilege to render a verdict to the full amount of damages laid in the declaration.

SPENCER, J. The Court has had no doubt, from the patient attention bestowed by you throughout the tedious trial of this cause, that the remaining part of your duty will be performed with that strict impartiality which the cause of justice requires. The parties are to me, and, no doubt, are to you, utter strangers. This was a source of peculiar gratification; for whatever may have been said in the progress of the trial relative to the advantages of a trial in the neighborhood of the parties, I believe, from experience, that an impartial decision could be better obtained before strangers, than in the *vicinage*. During the trial there have been several questions of law presented for the decision of the court. Among other questions, I decided, that the action was properly brought in this court; and also, that there had been a sufficient publication, in judgment of law, to support the action. There is in law, a distinction between verbal slander and a libelous writing; to support an action for slander, it is necessary for the plaintiff to show that the words spoken imputed to him some crime or misdemeanor cognizable by law; but to support an action for a libel, it is not necessary that the act imputed to the plaintiff should amount to a crime, for any publication calculated to hold up another to public reproach or ridicule is a libel. And the principal reason of this distinction is, that words may be uttered in the heat of passion, and without mature reflection; whereas a writing is generally the result of deliberation.

There is no doubt but that the matters contained in the publication upon which this action is founded are libelous, unless the defendant can prove them to be true; and if, as in this case, he does not attempt to establish the truth of the publication, it follows, necessarily, that it is utterly false. But, on this occasion, plaintiff has been permitted to prove

some of the charges false; though the counsel for the defendant objected to this evidence on the ground that he had not attempted to justify. This evidence the Court admitted; and on mature consideration, believes it to be right.

It has been said truly by defendant's counsel that, to support this action, it was necessary that the libel should be published: for should a man compose the most malignant production against another, and keep it in his own possession, no action could be maintained against him. But in this case, according to the opinion already expressed by the Court, there has been a sufficient publication of this libel by defendant. He published it in Boston, and subjected it to the inspection of his son, William Gibbons. It has also appeared in the progress of the trial, that in addition to the pamphlet intended for defendant's wife, and directed to her, there were four others endorsed by him, and directed to different persons. Some were delivered by her to plaintiff, and she herself distributed others; in doing which she acted as the special agent of defendant, who may so far be considered responsible for her acts; but in the opinion of the Court he ought not to be responsible for the publication of those delivered to plaintiff.

These facts being established, the next question is, what damages ought plaintiff to recover. On this occasion, the defendant, instead of justifying, has set up in extenuation, the reason and motives which actuated him in making the publication. The plaintiff, in the first place, is charged with going to Savannah, and bringing the wife of the defendant to Elizabethtown.

There were frequent instances where suits were brought by one man against another, for running away with a wife, and depriving the plaintiff of her society; but it seldom, if ever happened, that bringing a wife to the husband, was considered by him blameable; and in the view of the court, instead of the defendant's imputing this to the plaintiff as a fault, the husband ought rather to consider himself laid under an obligation. That the plaintiff went with his mother-in-law to consult counsel relative to a divorce, is another charge against him. Why

she went to consult counsel we are not informed; but in the absence of all testimony on this subject, it is but just to refer to the publication itself, and to the abominable principles which it contains, to arrive at the reasons which induced her to leave the house of her husband, and apply for professional advice in obtaining a final separation. This, therefore, affords no excuse for the conduct of the defendant. This libel was published, not in the heat of passion—it was the result of cool deliberation. The object was to drive her from her purpose, by presenting to her view a tissue of falsehoods, the most indecent, immoral, and abominable, that the mind can conceive. According to the testimony, this very unjustifiable procedure produced the effect intended, and the wife returned to the house of defendant, and shortly afterwards embarked for Savannah.

It has been urged to the jury, that plaintiff himself entered into a family compact, wherein all past differences were to be buried in oblivion, and his children were to be placed on an equal footing with the other members of the family, with regard to the future disposition of defendant's property; but we find that plaintiff entered into no other agreement than to take up the pamphlets delivered to others. Other grounds of defense have been assumed by defendant's counsel, but I deem it a duty to instruct you, that in my view, this libel was published by defendant without any justifiable cause.

In determining the amount of damages, it will be necessary for the jury to recur to the charges against plaintiff in the body of the publication. These may be classed under four distinct heads: Incontinency, or criminal intercourse with defendant's daughter, before marriage—stealing or pilfering certain letters—habitual mendacity, and hypocrisy, by making a mock of religion. Admitting all these charges to be true, what must have been the depravity of that man's heart in committing to paper, and deliberately printing such matters as this pamphlet contains, against the members of his own family. But the publication stands before us as wholly false; and we have no reason to believe a word of it to be true.

In the first place, in awarding damages, it will be your duty to render to plaintiff ample reparation for the loss of reputation sustained by means of the publication. It has been shown that his character is fair and unblemished; and, on this occasion, it has not been impeached. In the second place, plaintiff is entitled to compensation for the injury inflicted on his feelings by means of the libel. To arrive at a just measure of damages, under this head, perhaps the best mode is to place ourselves in the situation of the injured party, and to imagine what must have been the feelings, in our own minds, in consequence of the publication of such an atrocious production. But, in the last place, damages in a case of this description should be awarded with a view to the punishment of defendant, for the purpose of correcting the morals of mankind; and a public example should be made of defendant for the purpose of deterring others from the commission of similar enormities. On this head, the court will not venture an opinion, inasmuch as the measure and extent of damages, in cases of this description, are subjects confided exclusively to the sound discretion of a jury. It is proper, however, for the court to instruct you, that in your deliberations on the subject of damages, you ought not to be influenced by the consideration urged by the counsel for the plaintiff, that his children are to be deprived of a patrimony belonging to them in the future disposition of the property by their grandfather. With this subject the jury have no concern. The damages awarded shall also be proportionate to the wealth of the defendant; because a sum, which would operate to the ruin of a man in moderate circumstances, would not be felt nor regarded by a man of overgrown wealth. Though a man of this description ought not to be deprived of his freehold by a jury, yet such a verdict should be awarded as should teach him, as well as others, that in this community the sword of justice is whetted, and ready for the punishment of those who will thus violate the laws.

It has been proved that defendant has a vast annual income. It is to be lamented, that with such advantages in his hands—with such opportunities afforded him for doing good to his

fellow men, defendant should not have made a better use of his property. For I myself am constrained to say, from an impartial survey of the whole case, that in my experience in a judicial capacity, for a great number of years, I have scarcely, if ever, witnessed a production fraught with so much indecency, immorality, and I might almost add, of blasphemy, as the one on which this action is founded.

On the suggestion of *Mr. Emmett,* the COURT further instructed the jury, that defendant was not answerable in damages for the forty-five pamphlets which were retained, nor for the reflections contained in the libel against his wife and daughter; but the jury, nevertheless, in looking into the motives which influenced the publication, might recur to the whole production.

The *Jury* returned a verdict in favor of the plaintiff for $15,000.

THE TRIALS OF THE QUAKERS WILLIAM ROBINSON, MARMADUKE STEPHENSON, DYER AND OTHERS. MASSACHUSETTS, 1659.

THE NARRATIVE AND TRIAL [1]

Little has been preserved of the legal proceedings against the Quakers by the Colonists of Massachusetts Bay, but a Massachusetts lawyer who had access to much of the original documents in existence and to the early histories of the period, has given a vivid picture of the Trials.[2]

The colonists of Massachusetts Bay had no idea of religious toleration; it was preached against as a sin in rulers, which would bring down the judgments of heaven upon the land. They were in fact a corporation, existing by virtue of a charter, and possessed of supreme authority for the purpose of carrying into effect the objects of the grant. Surrounded

[1] *Bibliography.* "The legal proceedings against the Quakers by the colonists of Massachusetts Bay were quite informal, and the original documents which have been preserved, are few and incomplete. It is impossible, therefore, to give anything more than a general statement respecting these trials. The following account of them is derived from the records of the General Court; the papers relating to the subject in the archives of the Commonwealth, and the histories of the period referred to. Of the latter, Bishope's 'New England Judged,' is a Quaker authority of great weight. It was written in answer to a declaration of the General Court made in 1659, in defence of their proceedings. The first part of it was printed in 1661; the second part in 1667, and both united were reprinted, with some abbreviation, in 1703. It is a rare book, and I am indebted for a copy of it to the proprietors of the Library of Friends in Lynn. Among other works which have been examined are Sewel's History of the Quakers (London, 2d ed., 1725); Besse's voluminous Collection of the Sufferings of the Quakers (London, 1753); Cotton Mather's Magnalia; Hutchinson's, Hubbard's and Neal's Histories." Chandler's Criminal Trials, 33, see ante p. 116.

[2] Chandler, Id.

by new and untried difficulties, and far removed from the restraining influences of the common law of England, they assumed an authority inconsistent with its principles; and the general court extended its jurisdiction to the thoughts as well as the conduct of all within the reach of its power. The government was founded on certain religious doctrines, a denial of which was an offense against the State of the nature of treason. That a part of their number had a right to change their views of religious doctrine or civil government never entered into the apprehension of the majority.

When, in July, 1656, two Quakers, Anne Austin and Mary Fisher, arrived in the road against Boston, in a vessel from Barbadoes, their trunks were searched and their books burnt by the hangman. Other indignities they suffered, for which there was no authority by law, and, after five weeks of close imprisonment, they were thrust out of the jurisdiction, the jailer retaining their beds for his fees. Eight other Quakers arriving in the colony were immediately imprisoned, and sentence of banishment was passed against them all by the court of assistants; the master of the ship in which they came being required to take them away. At this time there was no law whatever respecting Quakers. In the following October, a law was made by the General Court, which recited, that "Whereas there is an accursed sect of heretics lately risen up in the world, which are commonly called Quakers, who take upon them to be immediately sent of God, and infallibly assisted by the spirit, to speak and write blasphemous opinions, despising government, and the order of God in church and commonwealth, speaking evil of dignities, reproaching, reviling magistrates and ministers;" and provided that any master of a ship bringing any known Quaker within the jurisdiction, should forfeit one hundred pounds and should give security to carry such Quakers back to the place whence he brought them; and on the arrival of such Quakers they were to be severely whipped and confined to hard labor in the house of correction. By a subsequent law, persons who should entertain Quakers were liable to a fine of forty shillings for every

hour's entertainment. Any person defending their "pernicious ways," or attending their meetings was also liable to a fine. Every Quaker, after the first conviction, if a man, was to lose one ear, and the second time the other; if a woman, she was each time to be severely whipped and for the third offense both men and women were to have the tongues bored through with a red hot iron.

Nearly all of these punishments were inflicted upon Quakers at different times, but with a directly opposite result from that intended. They construed these severities into an invitation for their presence, and their numbers increased in proportion to the excitement against them. They gloried in their sufferings; they were anxious for martyrdom. Imprisoned, flogged, mutilated, threatened with punishments yet more severe, they were thrust out of the colony; but returned in the first vessels they could obtain. They proclaimed their doctrines, with a bold and fearless confidence that astonished the people; and they suffered the indignities and cruel punishments inflicted upon them, with such mildness, forbearance and fortitude, as convinced many of the reality of that inner light by which they professed to be constantly guarded. At the same time, impartial history records, that many of the sect, which, at this day, is remarkable for a guarded composure of language, an elaborate stillness, precision, and propriety of demeanor, were at the time referred to guilty of conduct "which the experience of a rational and calculating age finds it difficult to conceive." They openly denounced the government of New England as treason. They reviled at all orders of magistrates and every civil institution. They stigmatized a regular priesthood as a priesthood of Baal. Some of them, in the apprehension of the colonists, were guilty of the most revolting blasphemy against the sacraments, which they termed carnal and idolatrous observances. They interrupted public worship in a manner as indecent as it was illegal and unbecoming. The female preachers exceeded the male in these acts of frenzy and folly, and excited the utmost disgust among a people remarkable for their staid and sober deportment. The

colonists, incensed beyond measure at this conduct, and, alarmed at the swarms of Quakers who were intruding upon them, threatened them with new punishments, the intolerable severity of which defeated their own objects. The government of Rhode Island, more wise than that of Massachusetts, though having the same horror of this sect, declined to pass laws against it. "For we find," they said in a letter to the General Court, "that in those places where these people aforesaid, in this colony, are most of all suffered to declare themselves freely, and are only opposed by arguments in discourse, there they least of all desire to come, and we are informed, that they begin to loathe this place, for that they are not opposed by the civil authority, but with all patience and meekness are suffered to say over their pretended revelations, and admonitions, nor are they like or able to gain many here to their way, and surely we find that they delight to be persecuted by civil powers, and when they are so, they are like to gain more adherents by the conseyte of their patient sufferings, than by consent to their pernicious sayings."

In October, 1658, a law was introduced into the Massachusetts General Court, providing that every person of the "cursed sect of Quakers," who should be found within the jurisdiction, should be immediately imprisoned without bail until the next court of assistants, at which they should have a legal trial, and, being convicted to be of the sect of Quakers, should be banished on pain of death. The law met with great opposition and was at first rejected; but, upon a reconsideration, it was passed by a majority of one vote, with an amendment that the trial should be by a special jury. It met with strong disapprobation of sensible men in Massachusetts and in the other colonies. Two members of the court entered their dissent against it; and one other who was detained at home by sickness would have voted against it and thus have prevented its passage. The younger Winthrop, governor of Connecticut, expressed much disapprobation at such an extreme proceeding, and made great exertions to prevent the law from being carried into effect.

There was no lack of victims. Three persons were found within the jurisdiction, who had notoriously violated the law, and they were immediately imprisoned. Of these, Mary Dyer, an antinomian exile, had twenty years before left the colony with Anne Hutchinson. Marmaduke Stephenson previous to his banishment, had made a disturbance in Boston. He acknowledged himself to be a Quaker, and declared, that in the year 1656, at Shipton, in Yorkshire, as he was at the plow, he heard an audible voice ordaining him to be a prophet to the nations. William Robinson was from London. At his first examination, he was sentenced to be whipped twenty stripes for abusing the court. These three having been banished on pain of death, by the court of assistants, Mary Dyer was claimed by her husband and taken back to Rhode Island. The other two, having come within the colony for the purpose of offering up their lives, determined not to depart; "so they went to Salem and some place thereabout to visit and build up their friends in the faith." As the time drew near for the Court to sit, when they knew they would be tried for their lives, they went to Boston, and with them Alice Cowland, "who came to bring linen wherein to wrap the dead bodies of them who were to suffer"; and others who desired to accompany the sufferers to the end. Mary Dyer also returned from Rhode Island; and the three who had thus incurred the penalty of the law were brought before the General Court on the 19th of October 1659, "for sedition and presumptuous obtruding themselves upon us, notwithstanding their being sentenced to banishment on pain of death." They acknowledged themselves to be Quakers, who had been banished on pain of death, and, on the next day they were all condemned to die.

When Robinson was sentenced he offered a paper containing a statement, that while he was in Rhode Island, the Lord commanded him to go to Boston and lay down his life there; that he durst not but obey without inquiring further concerning it, believing that it became him as a child to show obedience to the Lord without any unwillingness; therefore he remained

in their jurisdiction. Stephenson asserted, that he was commanded by the Lord to leave his wife and children and be a prophet to the nations. He first went to Barbadoes, but hearing that a law had been made in New England to put the servants of the living God to death if they returned from banishment, as he considered the thing and pondered it in his heart, immediately there came the word of the Lord unto him, saying, "Thou knowest not but thou mayest go thither." Soon afterward the word of the Lord came to him saying, "Go to Boston with the Friend William Robinson"; and he obeyed the command not in his own will but in the will of God. Sentence of death was then recorded against the prisoners and they were remanded to jail.

The record of these proceedings is as follows:

"William Robinson, Marmaduke Stephenson, and Mary Dyer, banished this jurisdiction by the last court of Assistants on pain of death, being committed by order of the General Court, were sent for, brought to the bar, acknowledged themselves to be the persons banished; after a full hearing of what the prisoners could say for themselves, it was put to a question whether William Robinson, Marmaduke Stephenson, and Mary Dyer, the persons now in prison, who have been convicted for Quakers, and banished this jurisdiction on pain of death, should be put to death according as the law provides in that case? The Court resolved this question in the affirmative; and the Governor in open court declared the sentence to William Robinson that was first to the bar; 'William Robinson you shall go from hence to the place of execution, and there and then hang till you be dead.' The like sentence the Governor in open court pronounced against Marmaduke Stephenson and Mary Dyer, being brought to the bar. Whereas William Robinson, Marmaduke Stephenson, and Mary Dyer are sentenced by this Court to death for their rebellion, &c.; it is ordered, that the secretary issue out his warrant to Edward Mitchelson, marshal general, for repairing to the prison on the twenty-seventh of this instant October, and take the said William Robinson, Marmaduke Stephenson, and Mary Dyer into his custody; and then, forthwith, by the aid of Capt. James Oliver, with one hundred soldiers taken out by his order proportionately out of each company in Boston, completely armed with pike and muskateers with powder and bullet, to lead them to the place of execution, and there see them hang till they be dead. And in their going, and being there and return, to see all things be carried peacefully and orderly. Warrants issued accordingly. It is ordered that Mr. Zachariah Symmes and Mr. John Norton repair to the prison and render their endeavors to make the

prisoners sensible of their approaching danger by the sentence of this Court and prepare them for the approaching end."

On the afternoon of October 22d, the prisoners were led forth to execution, surrounded by a guard of armed men and several horsemen, with drums beating to prevent the multitude from hearing anything they might say. "Glorious signs of heavenly joy and gladness were beheld in the countenances of these three persons, who walked hand in hand, Mary being the middlemost." Nothing could exceed the exultation with which they went forth to die; and they called on all to witness that they suffered for the cause of truth. "This," said Mary Dyer, "is an hour of the greatest joy I ever knew, no ear can hear, no tongue can utter, and no heart can understand the sweet refreshings of the spirit of the Lord which I now feel." The last words of Robinson were, "I suffer for Christ in whom I live and for whom I die." Stephenson said, "This day shall we be at rest with the Lord." Mary Dyer saw her two companions die before her eyes; and ascended the ladder to meet her own fate. Everything was ready; the rope adjusted to her neck, her extremities tied and her face covered, when a faint shout was heard in the distant, which grew stronger and stronger, and was soon caught and repeated by a hundred willing hearts. "A reprieve, a reprieve," was the cry, and the execution was stopped; but she, whose mind was intently fastened on another world, cried out, that she desired to suffer with her brethren, unless the magistrates would repeal their wicked law. She was saved by the intercession of her son, but on the express condition that she should be carried to the place of execution and stand upon the gallows with a rope around her neck, and then carried out of the colony.

She was accordingly taken home to Rhode Island; but her resolution was still unshaken, and she was again moved to return to the "bloody town of Boston," where she arrived in the spring of 1660. This determination of a feeble and aged woman, to brave all the terrors of their laws, might well fill the magistrates with astonishment; but the pride of consistency had already involved them in acts of extreme cruelty,

and they thought it impossible now to recede. The other executions were considered acts of stern necessity, and caused much discontent; a hope was entertained till the last moment, that the condemned would consent to depart from the jurisdiction; and when Mary Dyer was sent for by the Court, after her second return, Governor Endicott said, "are you the same Mary Dyer that was here before?" giving her an opportunity to escape by a denial of the fact, there having been another of the name returned from England. But she would not make an evasion. "I am the same Mary Dyer that was here the last General Court." "You will own yourself a Quaker, will you not?" "I own myself to be reproachfully called so;" and she was sentenced to be hanged on the morning of the next day. "This is no more than thou saidst before," was her intrepid reply, when the sentence of death was pronounced. "But now," said the Governor, "it is to be executed; therefore prepare yourself, for to-morrow at nine o'clock you die!" "I came," was the reply, "in obedience to the will of God, the last General Court, desiring you to repeal your unrighteous laws of banishment on pain of death; and the same is my work now, and earnest request; although I told you if you refused to repeal them, the Lord would send others of his servants to witness against them."

At the appointed time on the next day, she was brought forth and, with a band of soldiers, led through the town, about a mile to the place of execution, the drums beating before and behind her the whole distance. When she was upon the gallows, it was told her, that if she would return home, she might come down and save her life. To which she replied, "Nay, I cannot, for in obedience to the will of the Lord I came, and in his will I abide faithful unto death." Another said, that she had been there before; she had the sentence of banishment upon pain of death, and had broken the law in coming again now, and, therefore, she was guilty of her own blood. "Nay," she answered, "I came to keep blood-guiltiness from you, desiring you to repeal the unrighteous and unjust law of banishment upon pain of death, made against

the innocent servants of the Lord; therefore, my blood will be required at your hands, who willfully do it; but for those who do it in the simplicity of their hearts, I desire the Lord to forgive them. I came to do the will of my Father, and in obedience to His will I stand even to death." A minister who was present then said, "Mary Dyer, repent, O repent, and be not so deluded and carried away by the deceit of the devil." But she answered, "Nay, man, I am not now to repent." She was then asked to have the elders pray for her; but she said, "I know never an elder here"; she added that she desired the prayers of all the people of God. "Perhaps," said one scoffingly, "she thinks there is none here." Then looking round she said, "I know but few here." Being again asked to have one of the elders pray for her, she said, "Nay, first a child, then a young man, then a strong man, before an elder in Christ Jesus." She spoke of the other world and of the eternal happiness into which she was about to enter; and "in this well-disposed condition was turned off, and died a martyr of Christ, being twice led to death, which the first time she expected with undaunted courage, and now suffered with Christian fortitude." "She hangs as a flag for others to take example by," said a member of the Court, as the lifeless body hung suspended from the gallows.

William Leddra was the next who suffered for a violation of this law. After several whippings and a tedious imprisonment, he had been banished on pain of death, but soon returned and appeared publicly in Boston; he was immediately seized and chained to a log of wood in prison, where he suffered much from the cold during the winter months. In March, 1661, he was brought to trial before the court of assistants, in Boston. His offense of being a Quaker, and returning after banishment on pain of death was stated to him, when he demanded what evil he had done. The reply was that he had abused authority; he had refused to take off his hat in court, and would say thee and thou. "Will you put me to death," he asked, "for speaking good English, and

for not putting off my clothes?" "A man may speak treason in good English." "Is it treason to say 'thee' and 'thou' to a single person?" "Will you return to England?" demanded the Governor. "I have no business there," was the reply. "Then you shall go that way," pointing to the gallows. "Will you put me to death for breathing in the air of your jurisdiction? What have you against me? I appeal to the laws of England for my trial. If by them I am guilty, I refuse not to die." But twenty years before it had been "accounted perjury and treason to speak of appeals to the king," and a sneering remark was made on the present occasion, which was long remembered by Charles II, whose royal ear it soon reached. "This year you appeal to England; the next, parliament will send over to inquire; and the third year, the government of England will be changed."

At that moment, Winlock Christison, another banished Quaker, suddenly and most unexpectedly entered the Court, and took his stand by the side of the prisoner, striking dismay into the minds of all the magistrates, and for a time interrupting the proceedings of the Court. "Are you not the Winlock Christison who was banished on pain of death?" demanded the Governor. "Yea, I am." "What dost thou here then?" "I am come here," was the answer, "to warn you that you should shed no more innocent blood; for the blood that you have shed already cries to the Lord God for vengeance to come upon you." He was immediately committed to prison; and Leddra was offered his life, if he would promise to depart and return no more. Refusing this, sentence of death was passed upon him, to take effect on the 14th of March. On the day previous to his execution, he wrote a long farewell letter to his friends, in which he said: "The sweet influences of the morning star, like a flood distilling into my innocent habitation, hath so filled me with the joy of the Lord in the beauty of holiness, that my spirit is as if it did not inhabit a tabernacle of clay, but is wholly swallowed up in the bosom of eternity, from whence it had its being." After a morning lecture on the 14th of March, the Governor and a guard of

soldiers came to the prison, where the prisoner's irons were removed, and he took leave of his fellow prisoners. Arrived at the gallows, a stranger among the crowd, who had just come by sea, was deeply affected, and endeavored to interrupt the proceedings. "For God's sake," he cried, addressing the multitude in a loud voice, "take not away the man's life; but remember Gamaliel's counsel to the Jews. If this be of man, it will come to naught, but if it be of God, ye cannot overthrow it: but be careful ye be not found fighters of God." The captain of the guard bade him hold his peace, and he departed with tears, telling them they had no warrant from the word of God, nor power from the king, to hang the man. When the executioner was adjusting the rope to Leddra's neck, he was heard to say, "I commit my righteous cause unto Thee, O God." The last words he uttered, were, "Lord Jesus, receive my spirit." The crowd at length dispersed, but a few friends of the deceased remained, caught the body in their arms when it was cut down; and, after the executioner had stript it of clothing, they were permitted to pay the last tribute of affection to the remains of the dead Friend.

When Winlock Christison was brought to trial, he addressed the Court with undaunted courage. "By what law will you put me to death?" "We have a law and by that law you are to die." "Who authorized you to make that law?" "We have a patent which gives us the power." "Have you authority to make laws repugnant to the laws of England?" "No." "Then you are gone beyond your bounds. If the king did but know your hearts as God knows them he would see that they are as rotten towards him as they are towards God. You and I are subjects of the king, and I demand to be tried by the laws of my own nation. There is no law in England to hang Quakers." "But there is a law of England to hang Jesuits." "If you put me to death, it is not because I go under the name of a Jesuit, but of a Quaker. I appeal to my own nation." "You have broken our law," was the reply, "and we shall try you." The jury immediately returned a verdict of guilty; but the magistrates were divided

in pronouncing sentence. The Governor was irritated at their wavering, and on a second vote there appeared a majority for the doom of death. "What do you gain by it?" said the prisoner, "do not think to weary out the living God by taking away the lives of his servants. For the last man that you have put to death, here are five come in his room. If ye have power to take my life, God can raise up the same principles of life in ten of his servants, and send them among you in my room, that you may have torment upon torment, which is your portion; for there is no peace to the wicked, saith my God." He was then remanded to prison, and at the next General Court, in June, 1661, his case again came up and the following record exhibits the result.

"The Court, having considered what Wendlock Christopherson [1] could say for himself, in reference to appeal from the judgment and sentence of the Court of Assistants in March last, being brought to the bar, judge meet to order that the Governor pronounce sentence of death against him in open court, and to declare that the time of his execution shall be on the thirteenth day of this month of June, presently after the lecture, by warrant from the Governor. Provided, nevertheless, that if the said Christopherson, any time before his execution, shall desire the Court's favor, and, by a writing under his hand, engage that he will forthwith depart this jurisdiction, and from thenceforth return no more into it, without first having obtained leave from the General Court, or Council; he shall thereupon be discharged. The Governor in open court, the prisoner being at the bar, pronounced sentence of death against him, and acquainted him of the Court's favor."

The prisoner accepted the clemency of the COURT upon these terms, and was discharged.

[1] The records call him by this name but he called and signed himself Christison.

THE TRIAL OF PATERICK BLAKE FOR THE MURDER OF HIS WIFE. NEW YORK, 1816.

THE NARRATIVE

In a squalid tenement house in New York City a woman is murdered at night while she slept. The deed is done with a sharp knife which pierces her heart, and she dies instantly without being able to utter a cry. The husband was in the same bed and near them in another bed slept two other women. The husband was charged with the murder. On the trial the evidence was no stronger that he was the assassin than that it was one of the two women, and the Judge felt compelled to tell the jury that it would be wrong to convict the prisoner on the evidence before them. She must have been murdered by one of the three, but which one? The mystery was never unraveled. Well might the old reporter of this case conclude his recital in these words, "*Quare*, Reader in this dark affair, is there not something still behind the curtain."

THE TRIAL

In the Court of Oyer and Terminer, City Hall, New York, July, 1816.[1]

Hon. Jonas PLATT,[2] *Judge.*
Hon. Jacob RADCLIFF,[3] *Mayor.*
George BUCKMASTER, } *Aldermen.*
Peter CONROY, }

June 27.

The prisoner, Paterick Blake, having been previously indicted for the murder on April 22, 1816, of his wife Margaret

[1] New York City Hall Recorder, ante p. 61.

[2] PLATT, Jonas. (1769-1834) born Poughkeepsie, N. Y. Member Assembly 1796. Congressman 1799. Defeated for Governor of New York 1810. Justice Supreme Court 1814-1823.

[3] See Mazarra's Case, ante p. 60.

Blake, by stabbing her in the left breast with a knife, was arraigned, and pleaded not guilty. Having no counsel, the Court assigned him for his defense *David B. Ogden*[4] and *Mr. Sampson*,[5] and set the trial for July 2nd. *John Rodman*, District Attorney, for the State.

July 2.

Mr. Rodman for the people opened the case by explaining to the jury the nature of circumstantial evidence and argued that where a man is in a situation to commit a particular crime and it appears that no one else could have committed it, the proof of his guilt is presumed unless the contrary is proved. The prisoner and his wife had frequently quarreled; this showed a motive.

WITNESSES FOR THE PROSECUTION

John Bedient. I am Coroner of this city. On the morning of the 23d day of April last, prisoner, with another, came to my house, and prisoner said that he went to bed between 9 and 10 o'clock of the preceding evening in the same bed with his wife, and that he woke at about four in the morning, and found her dead. Inquired whether she died in a fit; he said he knew nothing about it, and wished me to go and view the body. I proceeded with the prisoner and his companion immediately to a cellar kitchen in Anthony street, in which there were three places for sleeping, one of which was represented as the place where the prisoner and his wife slept and this was on a bedstead; the other places were (where it was said two women slept) in bunks or miserable beds, the nearest of which I should judge to be within three or four yards of the bed where the prisoner slept; one of these bunks was in full view of the prisoner's bed. I turned up the clothes from the body, and found a wound under the right breast. My impression is that it was her right breast, but am not certain. There was much blood in the bed and on her clothes. The body was lying on the left side. The prisoner appeared totally indifferent and insensible. Sent for surgeons to examine the wound. Discovered the scar of a wound near the same place where the recent wound appeared, and asked the prisoner how the wound was made. He said it was made by falling on a knife she held in her hand.

After the examination of the deceased, I asked the Coroner's jury whether they wished to examine the prisoner. At their request, the prisoner took off his coat, and I discovered blood on the shirt sleeve of his right arm between the wrist and elbow. There also appeared to be blood

[4] See Mazarra's Case, ante p. 60.
[5] See Mazarra's Case, ante p. 60.

under the roots of his finger nails. I asked him how that blood came there? He said he did not know, and appeared to be ignorant—was stupid or insensible.

About this time, Abner Curtis, a police officer, brought a jack knife, four or five inches long in the blade, on which there was blood. Prisoner was asked whether that was the knife, to which he answered it was. He was asked whether he knew how the blood came on the knife, answered that he did not.

Rodman. (producing a jack knife, about three or four inches in the blade, the point of which was sharp, the blade straight, and thick in the back)—Is this the knife? The very same, though I was somewhat mistaken in the length.

Dr. Thomas Cock. Am a surgeon. On the morning of April 23d, was called by the coroner, to examine the wound inflicted on the body of Margaret Blake. This wound was under the left pap between the 5th and 6th rib. A short time after I came, Dr. Stevens came in with instruments adapted for such an examination. An incision was made by him, and I saw the result of the examination. The weapon with which the wound was inflicted, apparently progressed between the cartilages of the 5th and 6th ribs, in the direction of the heart—the wound appeared to have been done with a knife or other sharp pointed instrument. Dr. Stevens put his finger in the wound and said that it went in the direction of the heart. I saw an old scar near the new wound.

Rodman. I wish the Court to note that part of the testimony.

Sampson. We do not see what this has to do with the case. We wish the public prosecutor to explain his views in relation to this part of the evidence.

Rodman. I stated in the opening that I intended to show there were frequent quarrels between the prisoner and the deceased, to establish this general malevolence towards her; and I purpose to show, in the progress of this trial, that on a former occasion, the prisoner stabbed the deceased with a deadly weapon, and inflicted a wound, which then failed in its object, but occasioned this scar. I contend this will be proper evidence to show the *evil intent* which actuated his mind.

THE COURT. This, as an insulated fact, remote in point of time from the transaction forming the charge the prisoner is now called on to answer, is inadmissible. So a former quarrel, unconnected with the transaction wherein the death ensued, cannot be given in evidence. But if you can fill up the chasm of time between that wherein the first and second wound was inflicted, showing that the latter flowed from the former occasion, or was connected therewith; or if you can show there were frequent quarrels between the prisoner and the deceased, taking place but a short time preceding her death, you are at liberty to produce such evidence. But we think, without such restriction, the introduction of such evidence would be extremely dangerous.

Dr. Richard S. Walker. I was called on to visit the deceased, in company with Dr. Stevens and others. Dr. Stevens examined

the wound, which was on the left side, directly under the angle of the breast. He tried to introduce a small probe, and found it difficult. The cartilaginous part of the ribs appeared to have been penetrated transversely, by some sharp-pointed instrument, which entered the sack, or membrane of the heart. This, in technical language, is called the pericardium. It covers the heart, inclosing it to its basis, and its use is to keep the heart in its place without interrupting its office, and to prevent its friction with the other parts.

Rodman. Do you think that knife could have inflicted the wound you examined on the deceased? I particularly examined the separation of the ribs, and from the appearance of that separation, I am inclined to think that the wound could not have been inflicted with this knife. It appeared to have been pierced very clean. In that part, the rib is of a soft, spungy, cartilaginous substance. A small probe could not be introduced; and it appears to me, that it could have been introduced through an incision made with this knife.

The COURT. After the instrument, whatever it might be, was withdrawn, would not the cartilaginous parts, through which the instrument passed, have naturally collapsed? It is probable that the cartilaginous part of the ribs might have collapsed from the contraction of the muscles. I did not examine the wound with a view of ascertaining whether it could have been inflicted with this instrument. If it was, I should think it must have been a violent thrust.

Dr. Alexander H. Stevens. Am a surgeon, and have been in the habit of dissecting subjects in Europe. At the time mentioned, I went to examine the body of deceased, which was drawn up for that purpose. Some considerable blood was on her left side, some on her linen, and some on her hair. The wound was in the place described by the other witnesses. Serum ran therefrom. I endeavored to introduce a blunt instrument to ascertain the direction of the wound, and found that it went towards the heart. I found a difficulty of penetrating the chest with a director, and, of course, made a dissection, by which I first ascertained that the instrument, with which the wound was inflicted, had passed through and entirely divided the rib, which, in that place, was about two thirds of an inch in breadth. One part of the rib, through which the instrument passed, was fractured. After a way was cleared, I introduced my finger into the chest, and found much coagulated blood in the cavity. I satisfactorily ascertained, and believe that the instrument entered the left ventricle of the heart. I believe that such a wound might have been inflicted with this knife.

James Hopson. Am a police magistrate. On April 23d, the turnkey of Bridewell, in my presence, took out of the prisoner's waistcoat pocket this knife, which he said was his. The knife, at that time, had some appearance of blood, but looked nearly as it does now. Blood was on his shirt, and appeared at the roots of his nails.

Dr. John K. Rogers. Was present at the examination of the deceased, with Dr. Stevens. My opinion is that the wound inflicted could have been made with

this knife; and I fully coincide with the doctor in every particular of his testimony.

Catherine M'Gee. On April 23d, I lived in the same apartment with prisoner and his wife. Had lived there about five weeks. Jane M'Fall also lived with us, and we had separate places for sleeping. Prisoner and his wife slept on a bedstead in full view of the place where I slept. On that day I had been away, and returned at about five o'clock in the afternoon, and found the deceased in bed. Mrs. M'Fall was in the room. About eight or nine o'clock in the evening, the prisoner, who is a laborer, returned from his work, and deceased was still in bed. He went to the bed and said something to her, and she answered, but what I can not say. I had spoken to deceased in the afternoon, and asked her to get up, to which she answered, "let me alone," and I thought she was drunk. After the prisoner returned, I went to getting supper; and when it was ready, we pulled the table near the bed whereon deceased lay. Prisoner sat on the foreside of the bed with us, and finished supper, which consisted of potatoes and fish. About an hour after, we all went to bed; but, before going to bed, went to the bedside where deceased lay, to bind a handkerchief round her head, because I thought her drunk, and this would do her good. Discovered some blood on the back of her hand, which might have proceeded from a scratch; and the prisoner, who was then sitting upon the foot of the bed, angrily told me to let his wife alone; and when I inquired of him how the blood came there, said it was none of my business. Did not then think much of the blood, but thought of it the next morning, and mentioned the circumstance to Mrs. M'Fall before we went to bed. Did not hear any noise or disturbance through the night; but very early in the morning, about four o'clock, I was awake, and the prisoner said to me, "Are you asleep?" I answered, No. The prisoner then said, "I am afraid Peggy is dead, she will not speak to me." Says I, that can not be, for she was well enough in the afternoon and evening before. Wake her, says I, perhaps she is asleep. Prisoner then said she was dead and stiff. He struck up a light, and from my bed, I saw him shake her, and discovered that she was actually dead. He said, "I am a poor man this morning." I told him to go for the neighbors —he went out, and did not return till several hours afterwards with the coroner. Do not know that the prisoner lived more unhappily with his wife than is common. Never had any difference with the deceased.

Jane M'Fall. Am a poor woman; have lost my right arm, and work in the House of Industry. Slept in the same room with the prisoner and his wife. In the morning I heard him cry out three times, Peggy! I had lived in the same house about eleven weeks. I never knew of any difficulty between the prisoner and the deceased. Catherine M'Gee did not, the evening before the death of Mrs. Blake, mention to me about the blood on her hand. Did not hear any conversation between the prisoner and his wife that evening. Mrs. M'Gee and deceased were as intimate as sisters.

John Bedient (recalled). Ex-

amined the clothes and bed to try to find the instrument which occasioned the wound. I found none. Am now convinced that the wound was on the left breast of the deceased.

Doctors Stevens and Walker (recalled). Such a wound would be apt to produce almost instantaneous death. The person might have groaned: but how sleep or drunkenness would have prevented this, we cannot determine.

Dr. Benjamin R. Robson. My opinion is founded on actual observation, that a wound in that part of the body would have occasioned instantaneous death without a groan.[7] It must have been a violent thrust; and if it went through the rib, it must have been fractured.

Dr. Matthew Cunningham. Saw the wound and believe it could have been inflicted with this knife, and that it would have caused instant death. Thought the cartilages of the ribs were divided. Examined the bed to find the instrument, but found none.

Nicholas C. Everett. Was foreman of the Coroner's inquest that sat on the body. Prisoner was indifferent, said he knew nothing about the murder, and gave no satisfaction whatsoever. Have understood, by common report, that the prisoner and the deceased lived unhappily together. No person on the jury thought that Mrs. M'Gee discovered fear—no suspicion fell on her. Have known her for a considerable time, and have heard nothing against her character. Saw blood on the shirt and arms of the prisoner, and searched the bed, and could find no instrument which could have caused the murder.

Catherine Hanly. Am a near neighbor to the prisoner. At four o'clock in the morning, prisoner called out to my husband to let him in, and when I opened the door, he said, "Peggy is dead." I went with him to his apartment, and he went with me to the bedside. Prisoner said he had no hand in her death, and knew nothing about it. He stayed in the room, after I came there, about an hour, and then went for his son, and when his son came, the prisoner went for the coroner. Mrs. M'Gee is a married woman, whose husband was then in the country, but is now in this city. She said that she knew nothing about the death, and that the night before, she saw blood on the hand of the deceased.

William O'Connor. Lived in the same house with the prisoner: was waked very early that morning, and when I came into the room, I saw three women, one of which (Mrs. Hanly) was dressed; the other two, Mrs. M'Gee and Mrs. M'Fall, were not. In a short time after I came the prisoner and his son entered the room. I told the prisoner, it was a terrible thing to happen, in the course of the night, in the same bed with him. He denied any knowledge of the manner in which she came to her death, and said he had no hand in it.

[7] The reason on which this opinion is founded, was not shown on the trial. It is well known that the office of the left ventricle of the heart, is to propel the blood through the whole body; that of the

Rodman then read the prisoner's examination taken at the police. This examination did not, in any particular, contradict any account of this transaction the prisoner had before given. It was, when taken together, an enlargement of the circumstances of a case, then already involved in great doubt and mystery. It served, at any rate, if creditable, to bring the murder home to one of the three persons who slept in the room with the deceased, during the night of the 22d of April, after they had retired to rest. These facts were distinctly stated: 1. The prisoner, when supper was ready, went to the bed-side and asked his wife to partake, *which she declined.* 2. The prisoner fell asleep, while his wife and the two women *were conversing about the old countries.* This conversation is again recognized distinctly in the examination. 3. When he arose in the morning, he found the door bolted. 4. The blood on his arm was occasioned by laying it over the deceased in the morning, when he discovered she was dead. Neither of the women, however, remembered this conversation between themselves and the deceased.

WITNESSES FOR THE PRISONER

Nehemiah Allen. Was the keeper of the Bridewell, and searched the prisoner when brought there. I took out of his pocket this knife. Do not think it was materially different from what it is now.

Dr. Cunningham (recalled). When I saw this knife, there was every appearance of clotted blood on the back of the blade. I repeat, that it is my opinion that a wound, made in that part of the heart would occasion instantaneous death.

Dr. Stevens (recalled). Am confident that the wound inflicted on the deceased, penetrated the left ventricle of the heart.

right, to propel it through the lungs only. The left ventricle is much the thickest and strongest. The action of the left ventricle, in thus forcing the blood through the human system, in its dilation, may be likened to that of a forcing pump; and it is obvious, that when the propelling power is destroyed in either, all action must suddenly cease. Besides, it should be considered, that from the left ventricle, the great artery or canal arises, which deals out its branches to every part of the body. From the curved part of this artery, a little above the heart, arises the carotid artery, which runs directly on both sides of the larynx to the brain in divers ramifications. Hence a wound in this ventricle must necessarily produce certain death.—Reporter.

Mr. Ogden. This case is involved in much doubt and mystery. There are strong presumptions against the prisoner; stronger in his favor. The benignity of the law requires the jury to give more weight to the former than the latter. That the deceased was murdered is admitted. The only question is, did *the prisoner* murder her? The public prosecutor must rely on the strength of his own case: he can not call on us to disprove that which it is first incumbent on him to establish. The inquiry in this case is not who could have committed this murder, if the prisoner did not. The account the prisoner has given of this transaction from the commencement, has been plain, consistent, and uniform. It has substantially corresponded with the other testimony adduced on behalf of the prosecution. Flight, concealment, and fear, the inseparable concomitants of guilt, are expressly negatived by all the testimony. No motive to commit this horrid crime existed. The proof of domestic difficulties between the prisoner and the deceased failed on behalf of the prosecution. The testimony of M'Gee is, to say the least, strange and equivocal. It stands contradicted in various particulars. The doctors disagree. All is doubt and uncertainty. But if he did not commit this murder, who did? We cannot—we are not bound to show. It is difficult to penetrate into the mysteries of the case, and wise and discreet jurors will pause and hesitate long, before they will render a verdict against the prisoner because he cannot explain a transaction which the public prosecutor has not done.

Mr. Rodman. I shall recur to the facts in the case, and contend that they are inconsistent with the innocence of the prisoner. If the jurors, after a mature consideration of all the circumstances, believe this, they will find him guilty. From all the facts in the case, the conclusion is irresistible, that one of the three persons, who stayed in the apartment that night, committed this murder. It is clearly established that she must have been murdered after the others had retired to rest, and in the dead of night. The door was bolted. Neither Catherine M'Gee nor Jane M'Fall, had they been dis-

posed, would have undertaken this horrid deed in his presence, for fear of certain detection. The latter woman had not the power, and neither of them had the least motive. M'Gee and the deceased were as intimate as sisters. It is preposterous and absurd to suppose that either of these women committed the crime. If they did not, he did. He has not produced a single circumstance either in favor of his character or in explanation of the dark transaction. I have shown him in a situation in which he might have committed the crime and none else could have committed it. I leave it to the jurors.

Mr. Justice PLATT. Gentlemen of the Jury.—The prisoner at the bar is charged with the crime of murder, committed on Margaret Blake, his wife. That a horrid murder, under the most aggravating circumstances, was committed on this woman, is certain; the great difficulty in the case consists in correctly determining this important question, whether Paterick Blake did commit this murder? The law on the subject is well settled. Murder is defined as the killing of a person, in the peace of the people, with malice aforethought, either express or implied in law. Whether such murder was committed by the prisoner, depends on a careful examination of all the facts and circumstances of this case, from which the jury is to deduce the conclusion of his guilt or innocence. It has been justly remarked by the counsel on behalf of the prosecution that as this crime is generally perpetrated in secret, where there are no eye-witnesses of the fact, that circumstantial evidence must be resorted to, and in various circumstances is sufficient. On this occasion, I shall not go minutely into the evidence; it has been particularly stated, and ably commented on by the counsel on both sides; and must be fresh in your recollection. I shall merely advert to the prominent points in the case, and leave it to your determination, with such remarks as the court considers its nature requires.

The story of this transaction is short and simple. It appears that the prisoner and his wife lived, in an obscure situation, in Anthony street, in this city. There were two women,

Catherine M'Gee and Jane M'Fall, living as inmates in his apartment. On the afternoon of the 23d day of April last, the deceased was in bed, and the two women were in the room; and she was supposed to have been in a state of intoxication. Between eight and nine o'clock in the evening of the same day, the prisoner returned home from his labor, and the deceased was still in bed. While one of the women was preparing supper, the prisoner was near the bed for a considerable time, and spoke to his wife, and she answered him, but not distinctly enough to be heard by the witness M'Gee. After supper was prepared, the table was drawn near the bed, and the prisoner, sitting on the bed, ate his supper with the two women. Between nine and ten o'clock, Mrs. M'Gee, if she is entitled to belief, undertook to bind a handkerchief round the head of the deceased; and in doing this, she saw blood on the back of the hand. She inquired of the prisoner how it came there, who angrily told her it was none of her business, and required her to let the deceased alone. They retired to rest, and about four o'clock in the morning the prisoner called out to the deceased and gave the alarm to the women. A light was procured by the prisoner; and after examining and ascertaining that his wife was dead, the prisoner said that he was a poor man that morning. He called in a neighboring woman, stayed about an hour, went for his son and brought him, and then went immediately for the coroner. There is nothing unnatural in this conduct, nor does it indicate guilt.

It clearly appears that he returned to the house, and continued there about an hour, before he went for the coroner; and in this part of her testimony Mrs. M'Gee is certainly mistaken. On this point she stands contradicted: and how far it detracts from her credibility in other particulars, is left for you to determine. The two women agree in many particulars in their testimony, but they disagree on the subject of the wife's speaking to the prisoner the evening preceding her death.

The conduct of Mrs. M'Gee, in not rising in the morning immediately on hearing of the death, has been criticised with

much severity by the prisoner's counsel: but it should be recollected that fear operates differently on different minds; and, therefore, it appears to me that this circumstance is rather of an equivocal nature.

The fair construction of the whole testimony adduced, on the subject of domestic difficulties, is, that they lived as peaceable together as is common with people in that condition; and I think we may say with confidence, that the ground assumed by the counsel for the prosecution, in the opening, intended to be founded on family discord, has totally failed.

In his examination, the prisoner has been consistent. He has uniformly given the same account of this transaction. The usual concomitants of guilt are flight—alarm—concealment. It must be conceded that these indications of guilt cannot be imputed to the prisoner. He never denied the knife was his—he made no effort to conceal it—he did not endeavor to escape. There are several suppositions which may be framed concerning this murder. 1. She might have murdered herself. 2. She might have been murdered by some person before the prisoner returned in the evening. 3. She might have been murdered after his return, and during the night; and this last supposition is strongly fortified by the various circumstances in the case. If she was not murdered before the return of the prisoner, then the conclusion is irresistible that she was murdered by one of the three persons who stayed in that apartment during the night, unless she committed suicide. All the facts and circumstances in the case, forbid the conclusion, either that she was murdered by any person before the return of the prisoner in the evening, or, that she murdered herself either before or after his return. The prisoner himself, in his examination, shows that the deceased spoke and conversed after his return; and no instrument was found near the body, by which she inflicted the wound. It therefore follows, that she was murdered by one of the three persons who stayed in that room during the night; by which of them, it is impossible to say. Is it improbable that some other person in that room besides the prisoner, rose in the silence of the night, took the

knife from his pocket, inflicted the wound, and returned the weapon to its place, to cast the odium of such a horrid deed on the prisoner? What person this was, it requires us not to say, nor is it necessary to inquire.

Upon the whole, gentlemen, notwithstanding every effort to fathom this mysterious transaction, and arrive at the truth, we find ourselves embarrassed with difficulties; and a painful doubt rests on the mind. It only remains for me to charge you, that so dark is the whole transaction before us, and so involved in uncertainty is this case, that it would be utterly unsafe, on this testimony, to convict the prisoner: and when I say this, I wish it to be distinctly understood, that I express the unanimous opinion of the Court.

The *jurors* retired and in about five minutes returned with a verdict of NOT GUILTY.

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