

Report of the trial of Abraham Prescott, on an indictment for the murder of Mrs. Sally Cochran, before the Court of common pleas, holden at Concord, in the county of Merrimack, on the first Tuesday of September, A.D. 1834.

Contributors

Prescott, Abraham
Cochran, Sally.
Concord (N.H.). Court of common pleas (Merrimack county)
Francis A. Countway Library of Medicine

Publication/Creation

Concord : Published by M.G. Atwood, and Currier & Hall; John W. Moore, printer, 1834 [©1834]

Persistent URL

<https://wellcomecollection.org/works/zph4yrxm>

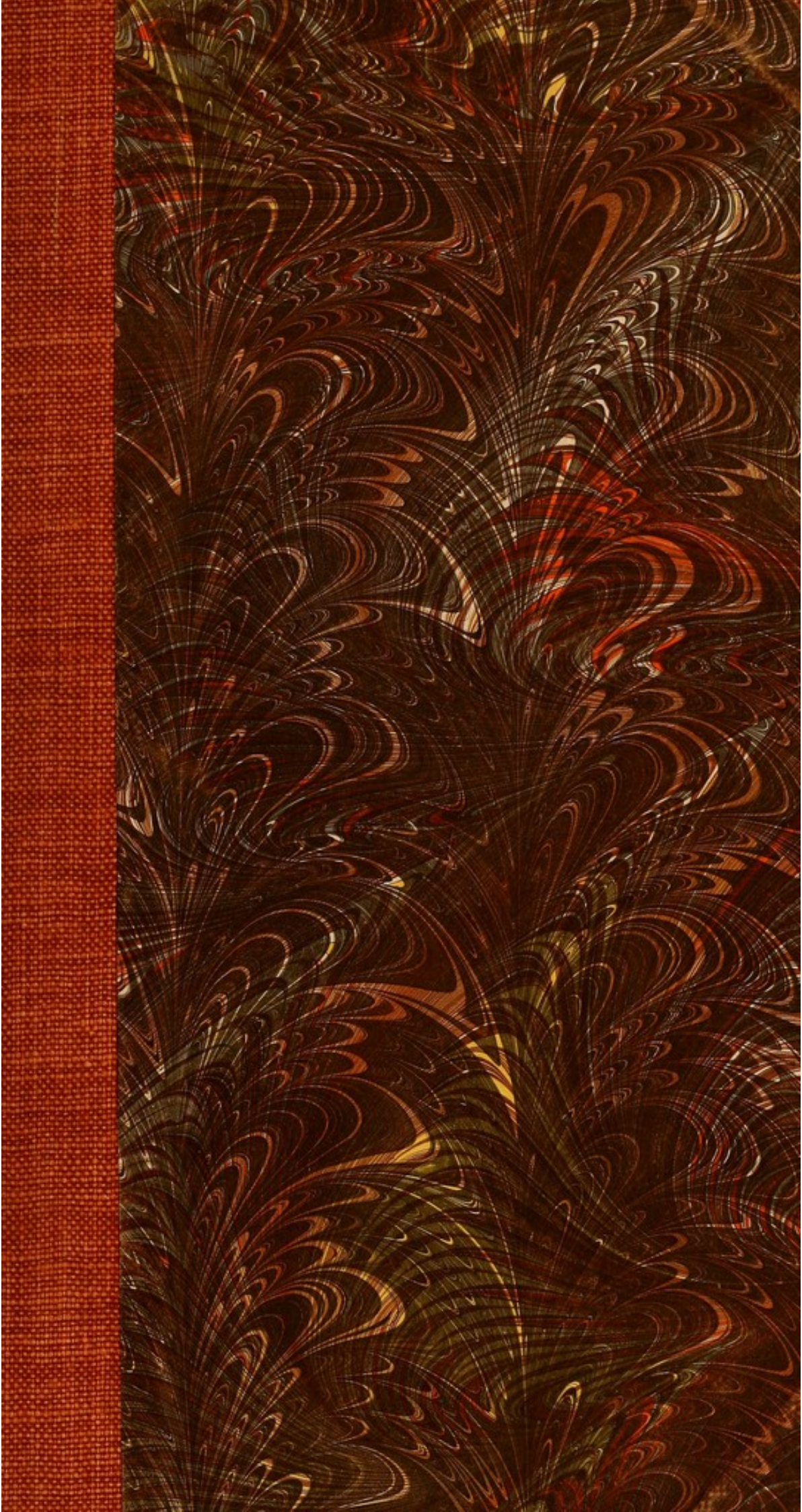
License and attribution

This material has been provided by This material has been provided by the Francis A. Countway Library of Medicine, through the Medical Heritage Library. The original may be consulted at the Francis A. Countway Library of Medicine, Harvard Medical School. where the originals may be consulted. This work has been identified as being free of known restrictions under copyright law, including all related and neighbouring rights and is being made available under the Creative Commons, Public Domain Mark.


You can copy, modify, distribute and perform the work, even for commercial purposes, without asking permission.

**wellcome
collection**

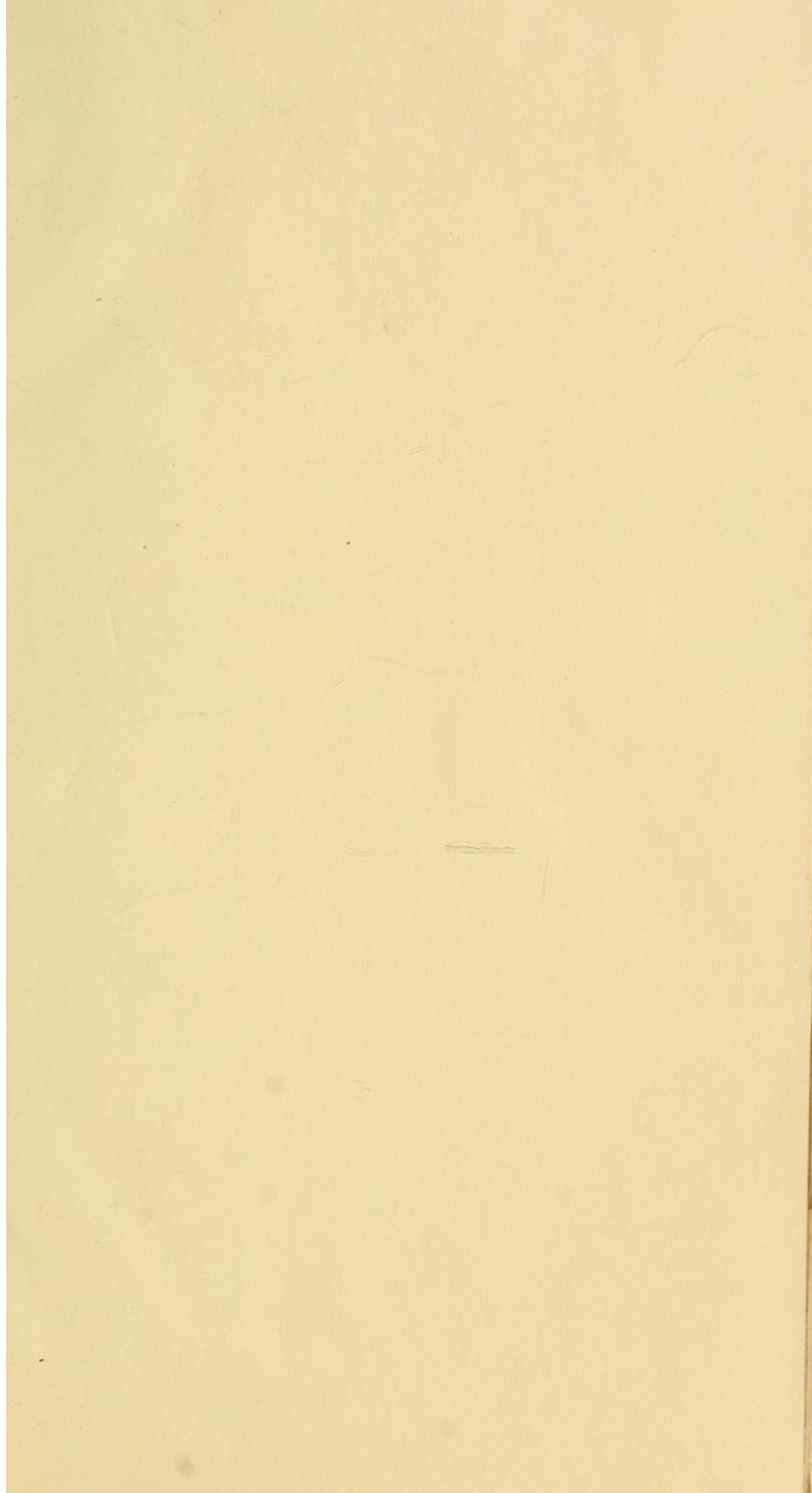
Wellcome Collection
183 Euston Road
London NW1 2BE UK
T +44 (0)20 7611 8722
E library@wellcomecollection.org
<https://wellcomecollection.org>

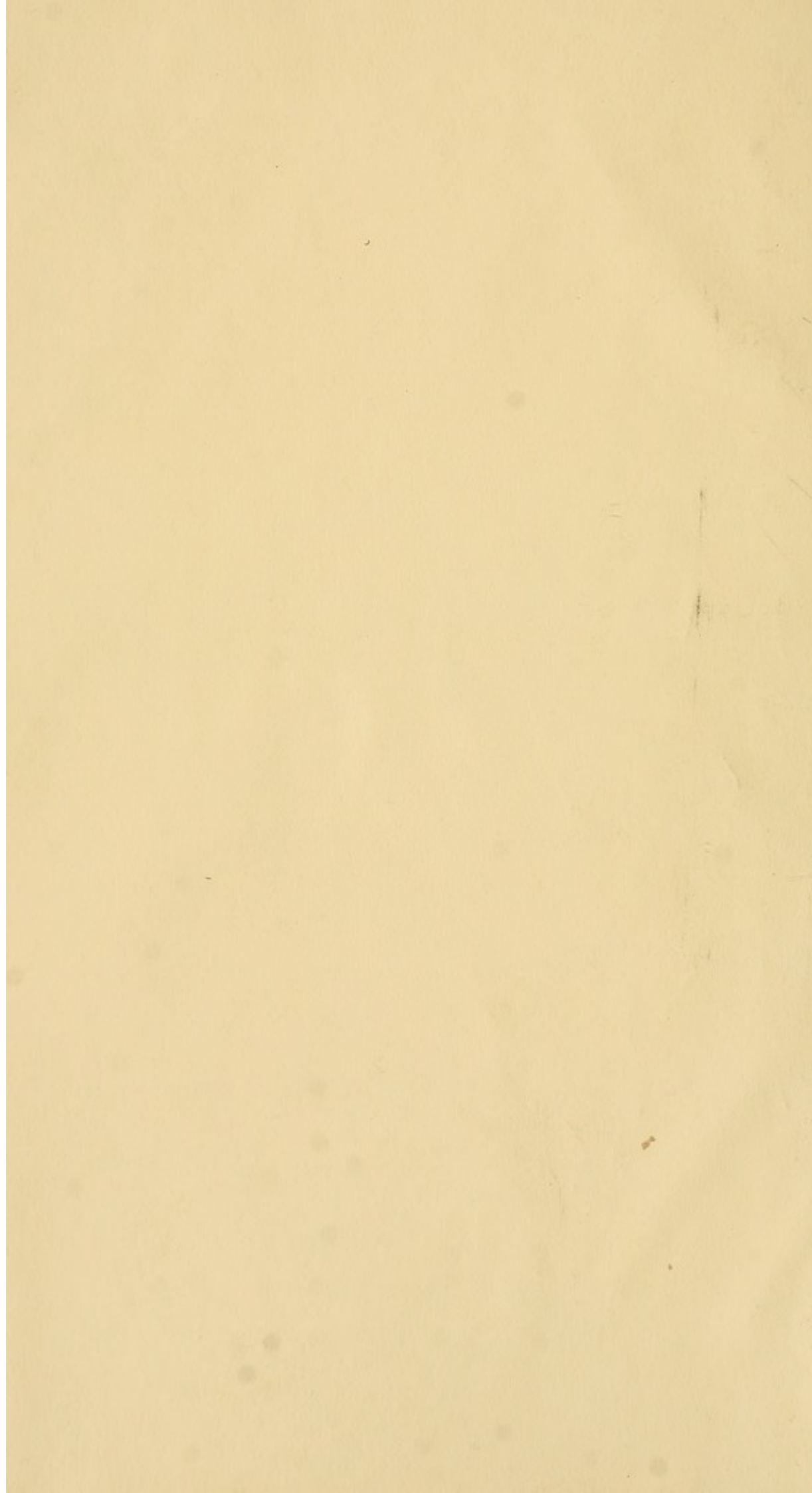


BOSTON MEDICAL LIBRARY
in the Francis A. Countway
Library of Medicine ~ *Boston*



Digitized by the Internet Archive
in 2010 with funding from
Open Knowledge Commons and Harvard Medical School





From Doct^r Perry

REPORT

OF THE TRIAL OF

ABRAHAM PRESCOTT,

ON AN INDICTMENT FOR THE MURDER OF

MRS. SALLY COCHRAN,

BEFORE THE COURT OF COMMON PLEAS,

HOLDEN AT CONCORD, IN THE COUNTY OF MERRIMACK,

On the first Tuesday of September, A. D. 1834.

Nicholas Emery

CONCORD:

PUBLISHED BY M. G. ATWOOD, AND CURRIER & HALL.

John W. Moore, Printer.

1834.

REPORT
OF THE TRIAL OF
ADVERTISEMENT.

The importance of the trial in the case *State vs. Prescott*, on a charge of murder, and the possibility, if not probability, that a new trial will be had on the indictment at the next February term of the Court of Common Pleas---furnish a sufficient apology for the publication of the subjoined full report of the first capital trial which has occurred in the county of Merrimaack. The reporter has labored to be scrupulously accurate, and in order that no points in the truly eloquent and able arguments of counsel might be lost, he has submitted these pages to their examination and revision. It is highly important to the public and the prisoner, should a new trial be had in the case, that the evidence and arguments on the former trial, should be truly and clearly stated---and such it is believed will be found to be the case in the following pages.

JACOB B. MOORE.

Concord, Oct. 1834.

Entered, according to Act of Congress, in the year 1834,
By JOHN WEEKS MOORE,
In the Clerk's Office of the District of New-Hampshire.

REPORT.

On the 24th of June, 1833, *Abraham Prescott*, of *Pembroke*, was examined at *Pembroke*, in the county of *Merrimack*, before *SAMUEL COCHRAN, JUN. ESQ.* Justice, assisted by *SAMUEL SARGENT* and *WINTHROP FOWLER, Esquires*, Justices, on a complaint for the murder of *Mrs. Sally Cochran*, at *Pembroke*, on the 23d of the same month, and was ordered to stand committed.

At the September term of the Court of Common Pleas, for said county of *Merrimack*, the Grand Jury returned the following Indictment :

State of New-Hampshire.

MERRIMACK, SS. At the Court of Common Pleas, holden at *Concord*, within and for said county of *Merrimack*, on the first Tuesday of September, in the year of our Lord one thousand eight hundred and thirty-three—

The Jurors for the State of New-Hampshire, on their oath present, that *Abraham Prescott*, of *Pembroke*, in said county of *Merrimack*, Yeoman, on the twenty-third day of June, in the year of our Lord one thousand eight hundred and thirty-three, with force and arms, at *Pembroke* aforesaid in the county of *Merrimack* aforesaid in and upon one *Sally Cochran*, in the peace of God and of said State then and there being, feloniously, wilfully and of his malice aforethought, did make an assault, and that he the said *Abraham Prescott*, with a certain large stick, of no value, which he the said *Abraham Prescott*, in his right hand then and there had and held, her the said *Sally Cochran* in and upon the back part of the head of her the said *Sally Cochran*, then and there feloniously, wilfully and of his malice aforethought did strike, giving unto her the said *Sally Cochran*, then and there with the stick aforesaid, by the stroke aforesaid, in the manner aforesaid, in and upon the back part of the head of her the said *Sally Cochran*, one mortal wound of the length of three inches, of the breadth of two inches and of the depth of one inch; of which said mortal wound she the said *Sally Cochran* then and there instantly died; and so the Jurors aforesaid upon their oath aforesaid, do say, that the said *Abraham Prescott* her the said *Sally Cochran* then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said *Abraham Prescott*, on the said twenty-third day of June, in the year of our Lord one thousand eight hundred and thirty-three, with force and arms at *Pembroke* aforesaid, in the county of *Merrimack* aforesaid

and, in and upon her the said Sally Cochran in the peace of God and of said State then and there being, feloniously, wilfully and of his malice aforethought, did make an assault, and that he the said Abraham Prescott, with a certain other large stick, of no value, which he the said Abraham Prescott in his right hand then and there had and held, her the said Sally Cochran, in and upon the head of her the said Sally Cochran, then and there feloniously, wilfully and of his malice aforethought, divers times did strike and beat, giving to her the said Sally Cochran by the striking and beating of her the said Sally Cochran with the stick last aforesaid, in and upon the right side of the head of her the said Sally Cochran, one mortal bruise; of which said mortal bruise she the said Sally Cochran then and there instantly died; and the Jurors aforesaid, upon their oath aforesaid, do further say, that the said Abraham Prescott, her the said Sally Cochran, then and there in manner and form last aforesaid, feloniously, wilfully and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

GEORGE SULLIVAN, *Attorney General.*

This is a true bill.

ABIEL FOSTER, *Foreman.*

The prisoner having been arraigned on the Indictment, pleaded thereto *Not Guilty*—and at the request of the prisoner, the Court assigned as his Counsel the HON. ICHABOD BARTLETT, and CHARLES H. PEASLEE, Esq. The prisoner was then remanded to prison, and the cause continued.

At the session of the Court in February, 1834, the prisoner's counsel having made affidavit that several witnesses whose testimony was believed to be material to the case, were absent, and unable to attend, the trial was thereupon postponed to September.

At the commencement of the term on Tuesday the 2d of September, by consent of Counsel, Tuesday the second week was appointed for the trial of Prescott. On Monday the 8th, some exceptions were taken to the list of Jurors furnished by the government, when it was agreed by Prescott's Counsel to waive all further objections, the Court issuing *venires* for six additional persons—three from each of the towns of Franklin and Salisbury.

Court of Common Pleas.....Merrimack, ss.

TUESDAY, SEPTEMBER 9, 1834.

PRESENT:

Of the Superior Court,

HON. WILLIAM M. RICHARDSON, *Chief Justice.*

HON. JOEL PARKER, *Associate Justice.*

Of the Court of Common Pleas,

HON. BENJAMIN WADLEIGH, and

HON. AARON WHITTEMORE.

The prisoner, *Abraham Prescott*, having been set to the bar, 53 jurors appeared and answered.

The list was then called over in the usual form.

- | | | |
|-----|---------------------------------------|-------------|
| | John Perkins, Allenstown, | challenged. |
| | Joseph French, Allenstown, | do. |
| 1. | <i>Joseph C. Thompson</i> , Andover, | sworn. |
| 2. | <i>Joseph A. Rowe</i> , Andover, | do. |
| 3. | <i>Wyatt Boyden</i> , Boscawen, | do. |
| | Jeremiah Webber, Boscawen, | challenged. |
| | Philip Baker, Bow, | do. |
| | Mark Baker, Bow, | do. |
| 4. | <i>John Kimball</i> , Bradford, | sworn. |
| 5. | <i>Jonathan Bagley</i> , Bradford, | do. |
| | Adams Foster, Canterbury, | challenged. |
| | Joseph Lyford, Jr. Canterbury, | do. |
| | Nathaniel Sherburne, Chichester, | do. |
| | Thomas Drake, 2d, Chichester, | do. |
| | Oren Shaw, Concord, | do. |
| | John Corliss, Concord, | do. |
| | Isaac Dow, Concord, | do. |
| | Ezra Ballard, Concord, | do. |
| 6. | <i>David S. Caldwell</i> , Dunbarton, | sworn. |
| | Nathaniel D. Huntoon, Salisbury, | challenged. |
| 7. | <i>Nathaniel Webster</i> , Salisbury, | sworn. |
| 8. | <i>Stephen Pingry</i> , Salisbury, | do. |
| 9. | <i>Joshua Fifield</i> , Franklin, | do. |
| 10. | <i>John Rowell</i> , Franklin, | do. |
| | Dudley Ladd, Franklin, | challenged. |
| | David Cox, Wilmot, | do. |
| 11. | <i>William Gay</i> , Wilmot, | sworn. |
| | Mitchell Gilmore, Jr. Warner, | challenged. |
| | Nathaniel A. Davis, Warner, | do. |
| | Henry Adams, Sutton, | do. |
| | John Roby, Sutton, | do. |
| | Isaac Proctor, Franklin, | do. |
| 12. | <i>James Colburn</i> , Franklin, | sworn. |

The panel having been completed, the Court appointed *Joseph C. Thompson*, foreman of the Jury.

The Clerk then read the Indictment, and said—"To this indictment the defendant has pleaded not guilty, and has put himself on the country for trial, which country you are; and you have been sworn to truly try the issue. May God send him a true deliverance. Good men and true—stand together—and hearken to the evidence."

Counsel for the Prosecution. HON. GEORGE SULLIVAN, Attorney General, and the County Solicitor.

Counsel for the Prisoner. HON. ICHABOD BARTLETT and CHARLES H. PEASLEE, ESQ.

The Solicitor, JOHN WHIPPLE, Esq. then opened the cause as follows :

May it please your Honors :

You are called upon, Gentlemen of the Jury, for the first time in this county,—and I fervently hope an occasion of the like kind will never again occur,—to pass sentence upon the guilt or innocence of a person who stands here, charged with the crime of murder. At the last September term of this court, a bill of indictment was presented by the grand inquest of this county against *Abraham Prescott*, of Perubroke, for having feloniously, wilfully and with malice aforethought taken the life of the late *Sally Cochran* :—a crime, gentlemen, revolting to the feelings of every humane and enlightened mind—a crime, which when committed deliberately, calls loudly for vengeance—a crime not only denounced by the laws of this state, but by the express commands of God.—“Whoso sheddeth man’s blood, by man shall his blood be shed.” “Moreover, ye shall take no satisfaction for the life of a murderer, which is guilty of death ; for he shall surely be put to death.”

As Jurors, gentlemen, it becomes you to give your undivided attention, and all your patience to every circumstance having any relation to this transaction. The public good, the safety and well being of society, demand that a patient investigation should be had. For it is not only of vast importance to the prisoner, who stands here charged with a crime, for which his life is demanded ; but it is of high importance to the public, and to yourselves gentlemen, that your whole attention should be given to the law and the evidence which may be laid before you.

Your commiseration perhaps may be excited in favor of the prisoner at the bar, when you take into consideration his youth and his general appearance. These circumstances may have

a tendency to excite your pity. But, gentlemen, let me ask you not to form any opinion in regard to him from any reports which may have been in circulation and which may have reached your ears, whether favorable or unfavorable. Every thing of this kind you should lay entirely out of the question. And you are bound, gentlemen, to consider the prisoner innocent of the crime alleged against him, until he is proven guilty—for this is an established principle of law.

It will be incumbent on the part of the government, to convince you beyond any reasonable doubt, that the prisoner committed the crime for which he is arraigned, before we can ask or expect you to pronounce him guilty of the offence. You have a painful duty to perform, and not only you, but every person in any way connected with this trial, must feel the weight of the responsibility resting upon them. But you must not forget, gentlemen, that a faithful discharge of your duty, painful as it may be, is beyond every other consideration. And I hope and trust that you will fearlessly and faithfully discharge that duty, regardless of consequences. Permit me to say that you may trust yourselves even with the life of a fellow being. It is the law which has put him into your hands. And if you severally discharge your duties with honest hearts and upright intentions, and with a full consideration of the law and the evidence which will be given you—whatever may be the result of this trial—whether you pronounce the accused guilty, or acquit him,—you will stand approved in your own consciences, and will have the pleasing reflection hereafter of having done no more on this occasion than the laws, and your duty to society, require of you.

I will now read the law applicable to this case, from the acknowledged authorities.

“The killing must be committed *with malice aforethought*, to make it the crime of murder. This is the grand criterion which now distinguishes murder from other killing; and this malice propense, *malitia praecognitata*, is not so properly spite or malevolence to the deceased in particular, as any evil design in general; the dictate of a wicked, depraved and malignant heart, *un disposition a faire un male chose*; and it may be either *express* or *implied* in law. Express malice is when one, with a sedate, deliberate mind and formed designs doth kill another; which formed design is condemned by external circumstances discovering that inward intention; as lying in wait, antecedent menaces former grudges, and concerted schemes, to do him some bodily harm.”---4 *Black. Com. Book 4, p. 198, 99.*

“Also, if even upon a sudden provocation one beats another in a cruel and unusual manner, so that he dies, though he did not intend his death, yet he is guilty of murder by express malice; that is, by an express evil design, the genuine sense of *malitia*. As when a park keeper tied a boy, that was stealing wood to a horse’s tail, and dragged him along the park; when a master corrected his servant with an iron bar; and a schoolmaster stamped on his scholar’s belly; so that each of the sufferers died; these were held to be murders.”---*Ibid.*

"Also in many cases where no malice is expressed, the law will imply it; when a man wilfully poisons another, in such a deliberate act the law presumes malice, though no particular enmity can be proved. And if a man kills another suddenly, without any, or without a considerable provocation, the law implies malice; for no person unless of an abandoned heart, would be guilty of such an act, upon a slight, or no apparent cause."---*Ibid.* p. 200.

"We may take it for a general rule that all homicide is malicious, and of course amounts to murder, unless where justified by the command or permission of the law; excused on the account of accident or self preservation; or alleviated into manslaughter by being either the involuntary consequence of some act, not strictly lawful, or (if voluntary) occasioned by some sudden and sufficiently violent provocation. And all these circumstances of justification, excuse or alleviation, it is incumbent upon the prisoner to make out, to the satisfaction of the court and jury: the latter of whom are to decide whether the circumstances alleged are proved to have actually existed; the former, how far they extend to take away, or mitigate the guilt. For all homicide is presumed to be malicious, until the contrary appeareth upon evidence."---*Ibid.* p. 201.

"In every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity are to be satisfactorily proved by the prisoner, unless they arise out of the evidence produced against him; for the law presumeth the fact to have been founded in malice until the contrary appeareth. And very right it is, that the law should so presume. The defendant in this instance standeth upon just the same footing that every other defendant doth; the matter tending to justify, excuse, or alleviate, must appear in evidence before he can avail himself of them."---*Foster's Crown. Law*, p. 255.

"When the law maketh use of the term *malice aforethought*, as descriptive of the crime of murder, it is not to be understood in that narrow restrained sense, to which the modern use of the word *malice* is apt to lead one, a principle of malevolence to particulars; for the law by the term *malice* in this instance meaneth, that the fact hath been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit."---*Ibid.* p. 256.

"Most, if not all the cases, which in our books are ranged under the head of *implied malice*, will, if carefully adverted to, be found to turn upon this single point, that the fact hath been attended with such circumstances as carry in them the plain indications of an heart regardless of social duty, and fatally bent upon mischief."---*Ibid.* p. 257.

It now becomes the duty of the government, gentlemen, to prove the killing, as alleged in the indictment; and I will briefly state to you the evidence we shall offer you in relation to that point.

We shall in the first place shew you that the prisoner lived in the family of *Chauncey Cochran*, the husband of the deceased; that he had resided in the family for nearly three years preceding the commission of the homicide. We shall show you that the prisoner, on the morning of the 23d of June, 1833, between the hours of nine and ten o'clock, proposed to the deceased to go into a field a few rods north of the house, and in full view of the road, for the purpose of picking strawberries—that he made this known to the husband of the deceased—that the prisoner and the deceased left the house together, and

9

went into the field where he proposed to go—that this field was in full view of the road, and of three or four houses. We shall show you that in this field there had been an abundance of strawberries, and that they were still plenty there. We shall also prove to you that the field in which the murder was committed had few or no strawberries; that it was about 70 rods distant from the house, and more than 100 feet lower than the field where they first went; and that the prisoner must have been fully aware of this, as but a few days previous he had been in this field in company with Mr. Cochran mending fence. It will also appear in evidence before you, that the pasture where the fatal deed was perpetrated, was a retired and lonely spot, surrounded by woods on the north, east and west, and on the south, there was no road or dwelling to be seen. In this place, so secluded and remote as to be beyond the reach of human voice, we shall show you that *Mrs. Cochran* was inhumanly murdered. It will appear in evidence before you, that on the spot where she was killed, there appeared to have been a struggle—that the grass around the spot for a few feet appeared to be trodden down,—that she was dragged from the spot where she was killed about two rods into the edge of the adjoining woods. It will further be proven to you that the prisoner when arrested, had the marks of blood upon his garments; and still more, that he confessed the bloody deed. When these facts shall have been clearly proven to you, as they will be, we apprehend all doubts will be removed that the prisoner at the bar is indeed guilty of the crime alleged against him.

The Solicitor then proceeded to call the witnesses in behalf of the government.

Chauncey Cochran, (husband of the deceased) called and sworn.

The death of my wife took place on Sunday the 23d of June, 1833. About 9 or 10 o'clock in the forenoon of that day, the prisoner came into the room where I was reading, and observed to me that *Mrs. Cochran* wanted to go out and pick some strawberries—asked if I would go with her—told him I was engaged in reading *Avery's* trial, which I had borrowed, and could not go. He then said he would go with her into my brother *James Cochran's* pasture, where the strawberries were plenty. This pasture lies westerly of my house, about 20 rods from the road, with a field between that and the road—4 or 5 houses (mine among the rest) within about 30 rods, and in full view of this pasture. I continued reading perhaps an hour and an half, when, on my mother's enquiring, what made the noise she heard, I went to the door, and heard a noise in the barn, where I immediately went, and found the prisoner sitting in the door of the shed at the further end of the barn, at the

head of the lane leading down to the pasture. I asked him what he was about—he said *he had struck Sally (Mrs. C.) with a stake, and had killed her.* I asked him where she was—he said she was in the Brook field (the name of the pasture where she was found.) I ordered him to run, and show me where she was. He was loth to go, but finally started; and on the way stated, that he had the tooth-ache, sat down by a stump, fell asleep, and that was the last he knew until he found he had killed Sally. He then asked me if I would hang him. I told him I believed the devil had got full possession of him. When we got to the place where her bonnet lay, he stopped and pointed in the direction where her body was concealed in the bushes. When I reached her, she was just alive; I ordered him to run for help—he refused—I sprang at him—he then ran on before me—and I halloed till I alarmed the neighbors.

The scene of the murder was down under a hill—a spot nearly surrounded by trees and bushes—no house in sight in any direction. The place is quite low, about 150 feet lower than that where the prisoner proposed to go. The body of the deceased was dragged about two rods from the place where she was killed, and concealed behind some bushes—a person must go within 2 or 10 feet before he would discover where she lay. The prisoner must have been perfectly aware of the situation of this place, as he worked with me 8 or 10 days previous in making fence, and was sent the very day before across this field after bark. There were few or no strawberries in this field—but they were more plenty in the field where prisoner prepared to go than any where else in the neighborhood.

Cross examined.—My Brother's pasture in some places comes within 2 or 3 rods of the spot of the murder. There were no strawberries near—there may have been five or six years before. People did not go there for strawberries—though it was about the height of strawberry time. No remembrance of my wife's having been strawberrying but once that season. Prescott first suggested to me the going after strawberries. I never stated otherwise. I did not notice the basket, or strawberries, on the spot of the murder.

Question.—Did the prisoner ever before make an assault upon you or your wife?

Answer.—On the night of the 6th of January, 1833, prisoner got up, built a fire, and afterwards struck myself and wife on the head with an axe. The account was given us by prisoner himself—I and my wife were senseless for some hours. I was wounded on the temple and Mrs. C. on the cheek. Prisoner said he was unconscious of hurting us, and supposed he must

have done it when asleep. First he knew of it, he saw me on my hands and knees on the bed bleeding; then called my mother, and raised the neighbors. I was satisfied he did it in his sleep; so were my wife and the neighbors.

[The following account of this transaction was published in the N. H. Patriot of Jan. 14, 1833:

PEMBROKE, JAN. 9, 1833.

Messrs. HILL & BARTON,—I was requested by Mr. Chauncey Cochran, of Pembroke, to give the facts relative to an unhappy and almost unheard of occurrence of somnambulism, that took place in said Cochran's family on Sunday night last, that the public may not be led to form erroneous opinions respecting the transaction, and request you to publish the same.

A young man who had lived in the house of said Cochran for several years last past, retired to bed at an early hour for the purpose of rising early the next morning. He came out of his chamber between ten and eleven o'clock—took a candle, went into the clock room, came back into the room where Mr. and Mrs. Cochran slept at the time the clock struck eleven. He then obtained a Buffalo skin from some part of the house, and lay down before the fire—Some time before 12, he got up, went into the wood shed, took an axe, came into the room which he left, went to the bed where Mr. and Mrs. Cochran slept, [they being in a sound sleep] and gave each of them a severe blow or blows on the side of the head, which left them entirely senseless. He then returned to the entry, left the axe, and on returning into the room he awoke. Seeing Mr. Cochran trying to raise himself, and making loud groans, he took the candle, went to the bed, and found said Cochran and wife literally covered with blood. He then went into an adjoining room, where said Cochran's mother slept and informed her that he did not know but he had killed Chauncey and his wife. As soon as Mrs. Cochran could get out of bed, she went into the room and found them in the condition before mentioned. The neighbors were immediately called in, and the subscriber, who has afforded all the medical aid in his power, can now state, that said Cochran and wife have so far recovered that hopes are entertained of a speedy recovery. Yours, respectfully,

SAMUEL SARGENT.]

Question by the Court.—Had the prisoner been in the habit of getting up in his sleep?

Answer.—This was the only time I ever knew of.

Quest.—Did he make any attempt to escape?

Ans.—No—he remained about home as usual.

Question by Prisoner's Counsel.—What did you say to him, when you conversed on the subject? did he appear to regret the occurrence?

Ans.—He appeared to be very sorry: I believed it. I told him he ought to be thankful that he had not killed us. He made no answer—would look down, and was not inclined to talk about it. There had been no misunderstanding between prisoner and myself or wife; he had resided three years in the family: his deportment was very good: he was obedient and kind: have known him to get water instead of my wife after she had started for it. The prisoner was 18 years of age the same month of the accident. I always thought he was bad tempered: sometimes abused the cattle: never quarrelled with any of the family: always treated the children affectionately: and never refused to perform labor; we never put any thing hard upon him after he had done his day's work. I always stated he was good and capable: never complained till recently of his bad temper: don't know that I requested others to refrain from speaking to him of the winter transaction: never censured him for it: gave him no money to appease him: my wife never requested me to go strawberrying: I never said she did: did not hear him ask her to go—I gave him no leave to go.

Whining noise heard by mother: it stopped when I approached: I spoke to him and he answered me. I do not know where he went while I was alarming neighbors. I never heard Mrs. C. complain of any rudeness to herself in the prisoner. I had been absent several times two or three days each: a short time before the murder I was absent and left only Mrs. C., two small children and a girl 10 or 12 years old, with the prisoner. Don't know that prisoner ever accompanied wife in the evening: have known him to attend her home from her father's: had been below four or five weeks previous to winter occurrence: nothing said at that time of killing hogs: wife generally washed early Monday mornings: prisoner not generally required to make fire: when she washed he often got up: never knew any thing in his conduct to induce me to suspect the winter affair to be an attempt at murder: know of no motive for his conduct.

In answer to further inquiries of the Attorney General, witness said: There could not have been many strawberries at or near the spot where deceased was killed. The prisoner sometimes had beat my cattle unmercifully. I had reproved him often for that, and on such occasions, he never made much reply—generally looked down and cross—had latterly grown rather more severe in his treatment of the cattle. The doctor inform-

ed me if the blows of 6th January had been on the back part of my head they would have been mortal—don't recollect whether prisoner was present.

John L. Fowler, Coroner, sworn.

In the morning of the 23d of June, 1833, Mr. Robinson informed me of the murder—I immediately went to the place, which I reached between 10 and 11 o'clock—found Mrs. Cochran dead. I then asked for the prisoner—ran to the house and inquired for him—found him in James Cochran's pasture, where I arrested him. I asked him what he had been doing? He told me he had killed Mrs. Cochran. I asked him how he had killed her? He said, with a stake. I asked him why, and if he had any cause, or if there had been any uneasiness between them? He said no—he didn't know why he killed her.

I have since had conversation with the prisoner. On Thursday after he was arraigned last September, I went to the prison to see him, and told him he had better confess the whole truth. At first he declined making any disclosure, but finally said he would to Maj. Stinson, warden of the prison, and myself, if Thompson, the deputy warden would remove M'Daniel, another prisoner who was present. This was done: when the prisoner stated, that he and the deceased went out into James Cochran's pasture together: from thence down into the Brook field: that when about to return homeward, he made her a proposal, which she indignantly repelled, called him a nasty, dirty rascal, and said she would tell Chauncey (her husband) of him, and he should be punished. Prisoner then sat down by the stump: considered his situation, thought he must go to gaol for his offence, and had as lief die as go there. Saw a stake near him, caught it up, and killed her. She was picking strawberries at a little distance, and probably was not aware of his approach: she made no ado: the blows were fatal. The prisoner said he had as lief die or be hung as go to prison. I was at the spot of the murder: the grass was trodden down very much: appeared as though there had been a scuffle at the place. A hair comb, one tooth broken out, basket of strawberries and calash were within 6 or 8 feet of the place. The blows were on the back part of the head of deceased: there appeared to have been two blows: the wounds were deep: might lay in your three fingers: one was on the right and the other on the left side, running to the back part of the head. The comb was a common large one, such as women wear on the back part of the head: there was no blood on the calash: one of her ear rings was out, the other in her ear, unlocked or open. [*The witness here produced and identified the stake, as*

the instrument of the killing : it was about three and a half feet long, and broken. He also produced the clothes which the prisoner had on when arrested immediately after the act.] The witness said there was blood on the stake, which lay where the scuffle appeared to have been ; the body was dragged 29 feet north-west into some bushes, about 12 feet from brush fence, secreted from view except in coming from the south : she lay on her back.

Cross-examined.—M' Daniel was in the prisoner's room when conversation commenced. Can't recollect exactly what was first said. He stated however that he was asleep when he killed the deceased. I told him that story would not do—I thought he had a motive, and that other people thought so. I told him I wanted to satisfy my own mind—and should like to have him state the whole truth to me just as it was—his confession would make no difference. Maj. Stinson said he would stand a better chance of pardon if he confessed. Prisoner then said, after Thompson and M' Daniel went out he would tell the whole. Never made any other confession to me.—M' Daniel remained 5 or 10 minutes in the room after I went in.

I first saw the prisoner lying down in the pasture, making a kind of moaning noise. Six or seven persons had been at the place of the murder before I got there. I never offered a wager that the prisoner would be hung, or wagered or bet he would be hung ; said I thought he would be hung ; told Richard Potter, if I was in the habit of betting, I would bet he would be hung. The shirt, waistcoat, and pantaloons are the same the prisoner had on when arrested. They were bloody. I did not take them off myself—but saw them taken off—and have kept them ever since.

[In answer to questions by the prisoner's counsel, witness was proceeding to state what husband of the deceased said when told of the prisoner's confession and motive—when the Attorney General objected to the inquiry as improper to be made—and the Court ruled it out as inadmissible.]

Jonathan Robinson, sworn.

It was a quarter to 10, when I reached the place of murder—there were 5 to 8 persons there—examined the spot—had the appearance as if deceased had been knocked down—grass not trodden down anywhere else.

Cross-examined.—Am nearest neighbor of Mr. Cochran ; live within 18 rods of him ; have lived there all the time prisoner has been at Cochran's ; have heard of his being a pretty

rough fellow before he came into the neighborhood, but not since ; never heard Cochran speak an unfavorable word of him—and never knew but they lived in harmony. The spot I examined was where comb, calash and basket lay—I kept people off the spot as much as possible.

Dr. Samuel Sargent, sworn.

I am a physician. I arrived at the spot at little past 11 o'clock—saw the situation of the deceased, but did not examine her wounds particularly until after the jury of inquest had been summoned, and then in the presence of Doct. Pillsbury. There were two wounds on the back of the head—one on the right side, almost three inches in extent, the scalp cleaved from the skull from two to three inches in width—the skull fractured and compressed upon the brain ; the wound on the left side two and a half inches long, and one three fourths to two inches wide—the skin broken, and the skull fractured from the occipital to the temporal bone ; there was a slight wound on the right side near the temple. There were probably three blows. Death must inevitably ensue from the wounds described. I went from my house to the spot in about 12 minutes—she had been dead, as I was informed, about 15 minutes.

Cross-examined.—I was at Chauncey Cochran's on the 6th January, 1833, at 5 minutes before 12, at night—staid about three hours—found Mr. C. and his wife both badly wounded and insensible—they remained so when I left. In 6 or 7 hours I again saw them, when they had partially regained their senses. Mr. C. was wounded severely on the right temple, his eyes swollen so that he could not see ; Mrs. C. was bruised from the nose across the cheek ; Prescott was about there, his appearance much as to day, and he sometimes expressed anxiety and moaned. I prepared at the request of the family and neighbors an account of the case for the N. H. Patriot, and my name was signed to the article. I thought it probable he got up in his sleep : knew of no difficulty in the family.

Attorney General.—Did you state in the presence of the prisoner, that the wounds of 6th January, if on the back of the head would have been mortal?

Witness.—Prescott was present at the time.

Chief Justice.—Did the wounds of the deceased meet at the back of the head, or were they more upon the side thereof?

Witness.—The wounds extended from each side of the head to within about three fourths of an inch of each other on the back of the head. There was about 3-4 of an inch not separated or cut.

Dr. John Pillsbury, sworn.

I have heard the testimony of the last witness. His statement is exact as far as it goes. I well recollect stating to Cochran, that if the blows of 6th January had been on the back of his head, they must have been fatal. The prisoner was within hearing.

Here the counsel for the Government stated that they should rest the case for the present.

The Court directed the Sheriff to see that the Jury were kept by themselves, and to provide them with refreshments, and adjourned to half past 2 o'clock, P. M.

In the afternoon, Mr. PEASLEE, of Counsel for the prisoner, opened his defence.

Gentlemen of the Jury:

The prisoner at the bar is charged with the crime of murder, and you are to determine in calm deliberation, in sober judgment and cold blood, whether he is guilty of an offence punishable by death. If then, as Jewish teachers inculcated, places of devotion, the vases and every thing connected with our church establishment, should be deemed holy and sacred, never could this house be appropriated to more solemn and legitimate purposes than on the present occasion, viz. the administration of justice, and the exercise of the highest earthly power over our fellow man.

The vast number who have assembled, taking cognizance of our proceedings, desirous that impartiality and equity should be administered,—constantly reminding us by their presence, that the life of a fellow being is at stake, and who will retire with increased or diminished respect and attachment to our institutions, confident of a fair trial, however monstrous and unnatural may be the crime of which they in turn may be accused—and secure of the protection the laws afford them against an ignominious death, so long as their motives are pure, although they may not be secure of a ray of reason to guide, or of consciousness to bind their actions; or else with feelings of *insecurity and distrust*—the momentous consequences of the matter now pending upon the prisoner at the bar, and with all our duty to ourselves (else reflection may come when reflection is too late)—these considerations should indeed characterize our proceedings with candor and solemnity; should hinder you, gentlemen of the jury, in particular, from being influenced by the thousand rumors which have been circulated, and some of which

have no doubt reached your ears ; should restrain witnesses from saying any thing lightly, heedlessly, or from prejudice—and all of us from doing aught unbecoming a court of law and justice in a civilized and enlightened community.

I know it has been often said, men derive greater advantage from opulence than virtue, that few there are even in our halls of justice who can coolly distinguish between the metal and the man ; but if in some places the individual in high life would excite public sympathy and be pitied for his misfortunes, while the penniless man under similar circumstances would be hurried to sufferings ; even if frequently the objects of the law are that unfortunate and helpless class upon whom oppression can be most easily exerted : yet it cannot be that, in this boasted land of impartial laws, an individual, if but arraigned from the humble walks of life, will be on that account presumed by those engaged in the dispensation of justice, to be steeped in the blackest guilt ; it cannot be with us that a person, if only poor, need but to be accused of an enormous crime, to be silently dragged to the gibbet.

No, Gentlemen, we have felt emboldened to proceed in this trial, and to state to you the prisoner's defence, confident that it will be candidly listened to, that he will receive without prejudice the consideration to which he is legally entitled, (and he asks of you no more) notwithstanding the fearful odds here placed before you: the strong arm, the whole power of the government, backed by industrious and wealthy individuals and men of high sounding commissions and professions, testifying and ferreting out testimony on the one side; while on the other, stands only the helpless youth whose life, whose all, is in your hands, incapable at best, of affording counsel assistance in preparing his defence from his confinement to a dungeon, but utterly so from the nature of his disease; and though most may wish he should have a fair and full trial, yet he could be particularly befriended in obtaining this, only by imbecile old age, decrepitude and pinching poverty. You may have perceived from allusions to confessions, in the opening of this case, with what feelings the prisoner has been pursued; we mean not on the part of the relations of the deceased, for counsel compassionate them in their bereavement sincerely as any one, and if we may not, like the prisoner at the bar, be willing freely to give up our life to restore her's, still we would make any sacrifices, were it in our power to afford relief—but we mean on the part of those witnesses, if there are such to be brought forward, who, whether from a feverish ambition to make themselves conspicuous, or from a more culpable motive, have lurked about the prisoner's

cell to get the sayings of an insane man, to produce his conviction; but which, it will be argued, ought to produce a contrary effect, viz. a confirmation of his innocence. For we shall prove to you that real lunatics are desirous, that it is frequently characteristic of them, to be desirous of being deemed free from the malady, and that they often assiduously endeavor to conceal from observation the lapses of thought, memory and expression, which tend to betray them, while the feigned, of course, never desire to conceal it. Real lunatics are willing you should impute their acts to malice or any cause besides the true one, their madness; while the feigned fear nothing so much as that they shall not be able to keep up the deception. Besides, it will occur to you that there is implanted in the breast of every man, these two conservative principles to restrain him from acts of violence, viz: a horror at taking the life of another, and a dread at parting with his own. And these inexplicable feelings have been given us so strong, that it is not possible for any human being, unless he has long been familiarized with vice and changed by habit entirely his nature, to overcome the constant operation of either, and never at once of both, under the strongest temptations. And no man need be in the least afraid to risk his life on this issue, viz. whether it is possible for any person educated, and with the habits and character of the prisoner, and surrounded by such circumstances, all at once to break over both these mountain barriers; to murder while of sound memory and discretion, in cool blood, without motive or provocation, his best friend, and then immediately furnish evidence to bring himself to the gallows. You may say, it would be possible, did he but will to do it; but that is the question, and it would be as impossible for any person under such circumstances, while in full possession of his reason to will to commit the crime and then take means to procure his own condemnation, as it would be to change the nature of man or to make a world. Well, the sayings of the prisoner, then, instead of showing guilt, give additional proof of his derangement, and innocence.

Surely it had been enough on the probability of his insanity on the face of the transaction, to thrust him forth from the world and make him the companion of state prison convicts; the associate of persons not only of all colors and degrees of crime, but of all complexions; and there he might have been permitted fettered, bound and helpless to have remained, if unsolaced and unadvised, at least unhunted, until he was put upon trial and proven guilty or innocent, in the ordinary way, for the world is never the friend of the accused, nor the world's law. But, gentlemen, if the prisoner has had no indus-

trious capable friends to aid counsel in making his defence, and to meet the extraordinary exertions made against him, we have no doubt you intend to give full weight to whatever shall be produced under such unfavorable circumstances and that you will not condemn him unheard and untried; but, notwithstanding your intentional candor, I would caution you against the danger of a secret influence to which we are all liable, that is of your suspecting the guilt of the prisoner barely from the accusation. You should try this case as though you never before heard of it. A man may be innocent and yet liable to suspicion. And as there is nothing more common among those who crowd around the bodies of persons found dead, than to suspect they have been murdered, and to hunt up or imagine circumstances to favor such a belief, and to fix the crime upon some person whom they suppose most liable to be guilty, which idea if untrue is permitted to gain strength by repetition and exaggeration, so there may be danger of accusation, of bare presentment for trial, being taken for evidence of guilt. There is also danger of the imputation of a crime which if true, considering the relation of the parties is almost unparalleled in enormity in this or any other country, and which should therefore render more improbable the guilt of the youth arraigned, more certain his defence. There is danger of this circumstance unless you are on your guard, instead of operating as it ought, to cause you to demand stronger proof, and to bear in favor of the accused, until he is clearly proven guilty of its having a direct contrary tendency. There is another secret bias you may have obtained by the exhibition made before you this morning of the bloody garments and instruments of death from their connexion with the prisoner; such exhibitions are like the ancients producing their weeping wives and children in courts, baring their arms and showing the scars they had received in their country's defence, to influence the jury and to get a verdict. They are a kind of silent eloquence, as is perfectly understood, by counsel in behalf of the State, which has an effect upon the feelings of mankind; beyond that produced by the most accomplished orators; and in this instance powerfully calculated to rouse an indignation unfavorable to the cool deductions of reason and the investigation of truth. No one will deny the almost unbounded influence of our feelings over our judgments, and that our passions and prejudices may be more powerfully stirred up by any material object that strikes the imagination through the senses than by any set form of words. You should then be on your guard, lest in the outset you receive a prejudice, which may lead your better judgments

astray through the whole case, by the dramatic exhibition, if I may so speak, made before you. But if from the darkness in which is enveloped the subject of insanity, particularly in this State, inasmuch as we have not like some of our sister States, an insane hospital, furnishing a school for the knowledge of lunacy, or in any part of it collected together, as in populous cities, a large number of learned surgeons, physicians and apothecaries, diffusing the result of their experience and information to the whole community; if from an over zealous anxiety that some one should be sacrificed for the loss of a valuable citizen, if influenced by popular rumor, if transported with indignation because the deceased was an amiable female; if thinking that the first man brought to the bar of the county for so heinous a crime ought to be condemned, or from a combination of similar causes we are hurried forward as were some, no doubt, well meaning citizens of an adjoining town, who wished to swear to the sanity of a man who had been a long time under guardianship for his known insanity, and were indignant that he was not indicted, tried and convicted for murder, when he was beyond all doubt insane in the mind of every person acquainted with the subject—if I say, we are led away and governed as were these men, then indeed will this trial be a bare mockery, and the temple of justice will be perverted to the most unhallowed of all purposes, and these walls in which have been so often commemorated the death, and thereby brought to mind the judicial murder of our Saviour, may serve to remind the occupants of their having been appropriated on one occasion, to any purpose except the merciful principles he inculcated. Surely, gentlemen, I mean no disrespect, but judges, jurors, witnesses, counsel, all are but erring men, and in a case too well calculated to inflame, at the first blush our passions and prejudices, what man dare say his judgment will remain clear, unclouded, and unbiassed, or who will not acknowledge that when he has been once strongly excited against an individual, it is difficult, almost impossible to contemplate his case with candor, and to do him justice. I therefore conjure you, as you value your peace and happiness, for painful indeed would be the thought that you had condemned to death an innocent man, to keep a watch over your own frailty, for the responsibility finally rests upon you; you are emphatically the judges of the law, as well as of the fact.

What then is the offence of which the prisoner stands accused? What are the necessary ingredients to constitute the crime of murder, all of which, as laid down in the books, must be united that you can give such a verdict as to take the life of the prisoner?

"Murder is therefore now thus defined, or rather described by Sir Edward Coke. 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 Black. Com.*

"To constitute murder, then, these circumstances must concur—the agent must be of sound memory and discretion—there must be an unlawful killing—the sufferer must be a reasonable creature, under the king's peace, and alive; and *there must be malice*, either express or implied in the slayer."—*2 Chitty's Crim. Law. p. 476.*

"*There must be malice, either express or implied.* It is this circumstance which distinguishes murder from every other description of homicide, especially from manslaughter, which comes nearest to it both in guilt and punishment."—*2 Chitty's Crim. Law, p. 480.*

"Lastly, the killing must be committed *with malice aforethought*, to make it the crime of murder. This is the grand criterion which now distinguishes murder from other killing."—*4th Black. Com. p. 198.*

Not every killing of a human being then is murder. There must, as the indictment, your text book, alleges, be malice aforethought, and this is the very essence of the crime; it must be done feloniously, wilfully, with a deliberate design, a premeditated purpose, otherwise the crime of murder has not been committed.

"It must be committed by a person of sound memory and discretion; for lunatics or infants, as was formerly observed, are incapable of committing any crime."—*4 Black. 195.*

"Madness is another cause which may render a man incapable of crime, and where it amounts to a total perversion or obscurer of the intellectual faculties, is an excuse for any enormities which may be committed under its influence."—*2 Chitty, 477.*

"It is agreed by all juries and is established by the law of this and every other country that it is the reason of man which makes him accountable for his actions; and that the deprivation of reason acquits him of crime. This principle is indisputable."—*Erskine's Speeches, 499.*

"The second case of a deficiency in will, which excuses from the guilt of crimes, arises also from a defective or vitiated understanding viz., in an idiot or a lunatic. For the rule of law as to the latter, which may easily be adapted also to the former, is, that a *madman is punished by his madness alone*. In criminal cases, therefore, idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities; no, not even for treason itself."—*4 Black. 24.*

"Where, however, the mind labors under such a delusion, that, though it discerns some objects clearly, it is totally deranged as to the objects of its attack, the party will be entitled to an acquittal."—*2 Chitty Cr. L. 477.*

It is clearly then recognized by the law that whenever there is a defect of understanding as in case of injuries committed by persons in a state of lunacy, somnambulism, or idiocy, no offence has been committed.

Idiots, madmen, persons not at the time in the full possession of their reason, such as somnambulists, are excused, whatever injuries they may commit.

A madman, as the law says, is punished enough by his madness alone, for should you bring in the prisoner not guilty by

reason of insanity, he must be consigned to the prison walls in effect for life, his only physician and nurse the jailor, his only medicine, bars, bolts, and manacles, his only soothing ministers to a mind diseased, the mockery of criminals, treated as a miserable outcast from God and man, condemned to be sure not to the disgrace of the gallows, but to a lingering death, to uninterrupted misery; last of all, must pay the expense if he has property. I am thankful that at least the days for the punishment of witchcraft are past with us, and that we do not as in Java, turn lunatics, who have no property, into the street and invite all to stone them to death; and I was glad to see, a year or two since, the indignation manifested throughout our country at the inhuman judicial murder of the amiable Capt. Paddock at Valparaiso, for an act done by him in a sudden fit of derangement, and that our newspapers did call upon our government to inflict exemplary punishment upon the blood-thirsty authorities there, who under a show of trial, either from ignorance or barbarity were in fact but ministerial agents binding and conducting their victim to execution: for it shows that public opinion is becoming more enlightened and correct on this subject, and that the time is fast approaching, if it has not already arrived, when persons, however violent their symptoms, however shattered their judgments, however malicious their propensities, however reckless their passions, by reason of insanity, can be tried without prejudice, without being pursued by the vindictive spirit of revenge, first to the recesses of their dungeon, and from thence to the halls of justice.

Well, gentlemen, it being necessary in order to make the killing of any person a murder, that the party, who did the act, should be a person of sound memory and discretion, and that the killing should be done with malice aforethought—What next does the law demand at your hands? why, that you should set out with the presumption of the innocence of the prisoner, and that you should not yield that presumption unless upon the whole evidence in the case, all reasonable doubts are removed from your minds. What kind of proof does the law require? to what certainty must the evidence bring you? That the party accused not only did the act, but that he was of a sound memory and discretion, and that it was done with malice aforethought, before you can convict. Can you for a moment balance between probabilities as in a civil cause, and decide this way or that, as the scale shall turn? No, Mr. Foreman, twelve men do not, cannot hold any such power over your life or mine, nor have you gentlemen any such right to presume, to guess at the guilt of the prisoner at the bar.

"It may also at this day be considered a rule of law, that if a jury entertain a reasonable doubt upon the truth of the testimony of witnesses, given upon the issue they are sworn well and truly to try, they are bound in conscience to deliver the prisoner from the charge found against him in the indictment, by giving a verdict of not guilty.

Sir Edward Coke, *in favorem vitæ*, exhorts juries not to give their verdict against a prisoner, without plain, direct, and manifest proof of his guilt, which implies, that where there is doubt, the consequence should be acquittal of the party on trial.

This reasonable doubt may result from various causes extrinsic of the evidence given upon oath; for a witness may be perfectly competent and swear positively to a charge, material to the issue trying, and yet not deserve credit from the jury.

Therefore, wherever the evidence warrants the observation, the judges consider it an indispensable duty in charging the jury, to remind them, that as they are intrusted with the administration of public justice on the one hand, and with the life, the honor and the property of the prisoner on the other, their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves whether they are satisfied, beyond the probability of doubt, that he is guilty of the charge alledged against him in the indictment.

And however strongly you may suspect the prisoner, yet it were better that one hundred guilty persons should escape, than make a precedent by which one innocent man might be found guilty upon such testimony!

And if there be a doubt, I take it to be a clear maxim, founded in humanity as well as law, that you must acquit the prisoner. For, in that case, the impression made on your minds, can at most create a strong suspicion of the prisoner's guilt—but that is not sufficient to convict him.

But I will go further, and say, if you have a doubt upon that question; if your minds be in a state of oscillation, you ought in that case to acquit the prisoner; because to justify a verdict of conviction to yourselves and to your country, the evidence upon which you decide should be above exception, and not evidence upon which you entertain any doubt.

However trite it may be, I must remind you of the maxim founded in humanity—that if you have any *rational doubt*, then, as fair and honorable men, you must acquit."—*Macnally's Rules of Evidence*, 2. 3. 4. 5. 6.

"The best rule, in cases of doubt, rather to incline to acquittal than conviction."—1 *Hale*, P. C. 509.

"It is better five guilty persons should escape punishment, than one innocent man should die."—2 *Hale* P. C. 289.

"It is safer to err in acquitting than in punishing—rather on the side of mercy than of justice."—*Ibid*, 290.

This is not the language of an attorney pleading the cause of his client, nor a one sided unsettled view of the law applicable to this case, but such as you are bound by your oaths to adhere to. Wretched indeed must be the country where even in cases of petty larceny, any person concerned in the administration of justice ever loses sight of this great maxim or principle of law, that in hesitation and doubt, the party should be acquitted, that no man should be convicted of an offence without the clearest evidence of his guilt. The civilians go so far as to say that the evidence should be *lucè clarius*, clearer than the light itself: but in the most moderate language of the law, it should be clear, full and satisfactory. If a reasonable doubt

can be raised, that doubt must be decisive for acquittal. You may say then that the verdict in nine cases out of ten means no more than that the guilt of the party has not been demonstrated beyond a reasonable doubt. Be it so—the humane spirit of the law does indeed multiply the barriers for the protection of innocence and freely admits that these may be abused for the shelter of guilt. It prefers that at least ten guilty should escape rather than one innocent man should suffer. Acquittal in no case invests a man with any power or privileges; it surely can give him no public confidence or restore the dead to life, and, in this instance, should the prisoner be acquitted by reason of insanity, he would be consigned to all the punishment a large class of our citizens believe, were he even guilty of murder, to be authorized either by the divine law or by public policy.

Whether the opinion advanced in the opening of this case, that the Deity requires the punishment of a murderer by death, be correct or erroneous, you should convict no man of an offence for which is to be exacted so dreadful a penalty without great caution and deliberation—if you are to err on either side, surely you should err on the side of that mercy which is an attribute to God himself. The Solicitor has quoted the text so much relied on by the advocates of capital punishment, “who-so sheddeth man’s blood, by man shall his blood be shed;” but notwithstanding this phrase, at the first blush, may appear to favor the belief that the punishment of murder by death was instituted by the deity; it is extremely doubtful, as annotators say, whether human murderers are here referred to—there is indeed great reason to suppose that man is here simply permitted or commanded to kill any beast that shall occasion the death of a man. The text literally rendered, it is said by able commentators, decides nothing; for the Hebrew word, translated “who-so sheddeth,” is a present participle corresponding to the English word shedding, and we have as good right to supply the ellipsis by whatever, as whoso or whoever. By interpreting this text, so that a beast and not man was intended, would suit the whole connexion; for in the preceding verses vengeance is denounced upon the beast that occasions the death of a human being, and the whole passage seems to refer to the relation in which man stands to the lower order of creation, and such a construction is borne out, and comports with similar sentences, requiring the sacrifice of any ox that causeth the death of a man or woman. Why! the punishment of the first murderer, Cain, by death, was so far from being encouraged by the unchangeable Deity, that he set a mark upon him, lest any finding, should kill him. The temporal punishment of a most aggrava-

ted murderer, was taken in this instance into his own hands, and if death was the only suitable one for all periods and under all circumstances, why was it not at that time inflicted by Him who cannot change?

The criminal was brought to the bar of God, tried and condemned, to what? to the gallows? to death? No, but to live. Spared too under the awful sanction, that whoso slew him judgment should come upon him seven fold. The first law on record then, against murderers, was made to preserve the life of the murderer. On Mount Sinai, too, was given the law, Thou shalt not kill. It may be said, this means thou shalt not murder, but may kill the murderer. But we must remember that the first law was made to preserve the life of the murderer.— Giving these passages such a construction would not contradict the one “whoso sheddeth,” &c., even if it does refer to man— for it may mean no more, than, that such a person is in danger of having his own blood shed. It might as well be contended from the text, “whoso leadeth into captivity shall be led into captivity,” that every captain of a slave ship, or every Southern planter should be punished by similar slavery, and that only which he had occasioned, as to say from this passage, that death and death only is the punishment authorized by the Deity, for the murderer. Both passages, like the one in the New Testament, “whoso taketh the sword shall perish by the sword,” may be said to be predictions rather than commands. But supposing the passage “whoso sheddeth” &c. does refer to man, and that it is a command, it would not authorize, as it has been well said, the present mode of killing murderers through the medium of judges, juries, sheriffs, and by public executioners. Whatever vengeance is required by that precept, as commentators say, is required by the context to be taken by the brother or nearest relation of the person murdered. Hence, the custom to this day, of Jewish widows carefully preserving the bloody shirts in which their husbands have been killed, for the purpose of displaying them at certain epochs of the year before the eyes of their children, at the same time exhorting them, to revenge the death of their father as soon as age and strength should permit them to do so.

But this mode of punishing murder, would, by our laws, be punished as severely as murder itself would be. At all events, a new and better dispensation, has been given to us, than that which existed among the Jews, a blood-thirsty and vindictive people, fond of every thing like harshness and severity, and among whom many customs might have been tolerated, as our Saviour said, when questioned upon that subject, “from the

hardness of their hearts." Christ did not, to be sure, enact a system of Jurisprudence, or point out all the defects in human governments: for it was no part of his mission to do so; but the whole spirit and tone of the merciful principles he inculcated, so far from ratifying, are directly at war with this exterminating practice.

Capital punishments had their origin in the principle of revenge, but the gospel requires the injured party to abandon such a spirit, to bring no punishment to the aggressor from such motives. He is commanded to forgive the injury as done to himself, and no farther to insist on punishment than is necessary to the public good.

The law of retaliation is to be made consistent with the law of love, and this seeks the welfare and reformation of the offender, so far as it can be done consistent with the safety and security of society, and not to feed private revenge. Was it under the Mosaic dispensation tolerated, for the nearest relative of the murdered person to avenge his blood, and was this the only way in which death was allowed to be inflicted upon murderers even then? We are commanded to "avenge not ourselves." It is not for us to look into the bosoms—to search the hearts of others and fix upon the degree of punishment or vengeance due to their motives. It is not for us to say, even to the murderer, you have forfeited all claim to human and divine mercy: we will therefore cut you off from every chance of reformation, from every opportunity of repentance,—we will hurry you before the spotless throne of God, with your hands imbrued in blood, lest by living, you should find favor in the sight of him, who came to save and not to destroy: and who, (were it not for our interference, in depriving you of your probationary existence,) might make your sins, though they be as scarlet, white as snow.

However sunk may be a man in vice, he is not given up for lost by him who stretched out his hands to the whole human family; but beckoned back to the paths of virtue, and treated as a being capable of moral feeling and of reformation. But what chance is there for reformation between the sentence and execution? Certainly, by depriving him of time and opportunity then, we go counter to the character, nature and infinite destiny of man, as taught by christianity.

Whatever may be inculcated as to a future state of existence—there is no belief, authorized by revelation, as to what may become of us hereafter, from which can be drawn arguments to justify our being instrumental in unnecessarily hurrying a fellow being into "that undiscovered country, from whose bourne

no traveller returns." Are there any who think that to the wicked there shall be a never-ending indescribable misery? It would be well for such to commune with their own spirits and consider whether they ought to be over anxious to seal such condemnation upon even a criminal, when by allowing him the time allotted by his Creator, he would have escaped such terrible punishment. Are there any who think there is to be no suffering hereafter; that he, who said to the malefactor on the cross, "this day shalt thou be with me in Paradise," hath prepared mansions in his father's house for the whole human family? Such would not say, that he, who hath outraged all society, does thereby an act, for which they are anxious to relieve him from the ills to which human flesh is heir to, and advance him immediately to the abodes of bliss.

If then the Jewish laws, adapted to the peculiar circumstances and situation of that people, cannot be considered as binding upon us—if it would probably have been republished in the christian code, had it been of religious obligation for us to inflict death, and if no positive instructions can be adduced from the New Testament in favor of it—if the legitimate objects of human punishment cannot be so well secured by taking of life as they can be by imprisonment, why, surely, Gentlemen, you will not imagine that you would be doing God service, in this particular case, to disregard that maxim of the law which requires that you should be satisfied beyond a reasonable doubt, before you can convict; and which has ever been approved and practiced upon by our wisest and most experienced judges. Neither the texts of scripture, introduced by the Solicitor, or the good of society require, that you should strain your oaths or hastily decide upon such a verdict as should occasion a spectacle, which, so far from operating to deter men from the commission of crimes, would have a tendency to increase them. Suicides have been ascertained to keep pace, to bear proportion to public executions. The Rev. Mr. Roberts, of Bristol, who visited many convicts under sentence of death, ascertained that in 167 instances which came under his immediate observation, 164 of the malefactors had been eye-witnesses of public executions, before the commission of the crime for which they stood condemned to the same ignominious punishment. The increase of population, in England, from 1801 to 1821, was a little more than one sixth, while the number of commitments during the same period, nearly quadrupled itself, notwithstanding her long list of offences, punishable with death. But in New-Hampshire, New-York, Pennsylvania and New-Jersey, where confinement has been resorted to for most of the same

offences, the number of commitments have not increased so fast as the population, and in some of them, while the population has increased one sixth, the commitments have not one twentieth. Many persons are to be sure collected to witness public executions—but some to pick pockets—some to gamble and fight—some for noisy festivity, and but few for better purposes than to get drunk with the excitement—with the horrid pleasure of witnessing the last agonies of a fellow being, swung between the heavens and earth. If the witnessing of such a scene is not sufficient to deter men from the commission of smaller offences on the spot, nay, more, if it rather invites them,—and even murders have been committed under the very gallows,—who will believe that it would operate to deter them at a remote period? Surely, then, it would be better that at least ten guilty persons should escape, by reason of supposed insanity, than one innocent man should suffer; especially, when it is considered that even then, they would be held up a living and continued example, to deter others from the commission of similar offences—would be haunted day and night by the bosom fiends that torment, and the furies that distract:—would be given up to the stinging mortification, the horrors of self-reproach within, while the gaiety, liberty and bustle of all without, would serve to aggravate their misery, and thus feel the anguish of a torturing conscience, until it did its perfect work, (for the pain which they suffered, would be an incentive to reformation and repentance,) or until him who gave life, took it.

Where a *murder* is alleged to have been committed, and the killing is proved, your first inquiry (in order to ascertain whether it was done by a person of “sound memory and discretion, and with malice aforethought”) should be into the motive of the accused. If, as you have been told, the law presumes malice from the fact of killing, this is a presumption, which may be rebutted by evidence and of the sufficiency of that evidence you must be the judges. Unless the deed be accompanied by circumstances proving deadly malice, unless the facts attending the transaction be such as to evince that it was maliciously done, and to confirm the implication of law, you cannot be satisfied beyond a reasonable doubt, that the very gist of the crime, viz: malice, did actually exist. If the prisoner had grown grey in iniquity, it might be argued that malignant passions operated: but being young as he is, strong proof of his malignity should be required before you convict. Can you believe, that the young man before you, has the hellish disposition, which would have led, while in the possession of his sen-

ses, to the commission of this crime? Such is the constitution of our natures, fashioned and made after the likeness and image of God and partaking of some of his attributes—that no man, however abandoned, aspires to commit the least wicked action, but from a hope to gain some profit; much less a crime so black and detestable, so horrid, that it would seem to be a complication of all guilt. Where is the evidence, that the accused has been from his infancy an object of dread and detestation—that his life has been a continued series of idleness, cruelty, vicious indulgence and violence—where, in the thousand kind attentions to the children, in the alacrity with which he performed every menial service and anticipated the wants of every member of the family,—where, in the confidence and esteem he inspired, was the countenance beaming with rage, the fierce, bold and headstrong demeanor, that caused all around first to tremble, then to hate, and which would indicate a readiness upon provocation, to fly, regardless of consequences in the face of all laws, human and divine. Unless all these circumstances concurred, and unless in addition, there was some provocation, some motive, the commission of the deed would be too big for belief, especially upon a defenceless and amiable woman. For the arm, that might be possibly raised and more strongly nerved, when met and opposed by a resisting and provoking man, would fall powerless and harmless before the imploring look of a meek and inoffensive woman. Is the prisoner then, a Vampyre in human shape, stalking about the earth, to drink the blood of our relatives and friends? Is he even a foreigner, educated in the school of vice, come to this country to rob and murder? Was it to glut savage vengeance, or satiate a long settled and deadly hate? Was it a cool, calculating, money-making murder? Alas! her death has not only brought the most poignant grief, the bitterest anguish to the accused: but has put him in jeopardy of his life, and must at all events bring imprisonment, poverty and want.

But we shall prove to you that he was brought up, and has always lived among people, than which, there lives not on earth, a more uncorrupted, substantial population. He was educated in the school of honest industry, his only associates our farmers, who respect and esteem men for their virtue and integrity. Criminals, too, calculate with accuracy the general chances of detection. Where, in this case, was the caution, the management to avoid suspicion and detection, the effort at concealment which always accompanies real guilt, the haste to be gone? You cannot plant your finger upon any part of his conduct after the act, which was such as would be a rational

man's under a sense of guilt, or apprehension of punishment: you cannot even conjecture a motive, that can stand a moment's test: you cannot fix upon any indication before the act, that borders upon design or malice: every circumstance in the whole history of the case, as given by the government witnesses, completely negatives any such belief. The conduct of the prisoner before and after the act, and the confidence reposed in him after the winter occurrence, by those who thoroughly knew and who were best able to judge, is confirmation strong of his innocence, for facts will not lie. Why, it shows in that case, he was not only innocent, but above all suspicion: and if he was innocent then, he was the June following; but all we have to do is to raise a doubt and claim the merciful interposition of the law. And I ask you, Gentlemen, even now to search your own bosoms and say, if the Government has made out such a case as the law requires they should, before you can convict. But, Gentlemen, laying aside the humane principle of the law, still you should lean against conviction, upon principles of philosophical responsibility, unless express malice is proven, where the defence set up is somnambulism or insanity. For, as a celebrated jurispudent observed, "the moral circumstances, which precede or accompany crimes, generally show whether they are the result of criminal intentions or derangement of intellect; that is to say, that in a real criminal there is always some motive of personal interest by which the moral cause of his act may be known." The form of insanity, too, which commonly leads to the perpetration of any enormity increases the difficulty of detecting it. And while there can be no danger of the guilty escaping from the mystery in which such subjects are involved, and indeed every thing relating to the human mind, there is great danger of the innocent being punished. For it is not long since, superstition and ignorance imputed every remarkable deviation of the human mind to the influence of evil spirits, and believed as Proculus said, "that the devil actually got into a lunatic as a maggot gets into a filbert." People formerly had no idea of insanity, unless the individual was continually raving and stark mad, while in reality, the degrees of derangement and the conduct of individuals when seized, are so diversified and infinite, that in the largest receptacle of lunatics, no two individuals can be found, in whom all these particulars are precisely similar. They are as various, as are the intellects, features, the constitutions and temperaments of men. So, that were you, Gentlemen, even acquainted with all the cases of insanity that ever have existed, you might not find one precisely parallel. And since the diseases of the mind

are in their nature so obscure and so untoward in their manifestations, in order that all the indications should occur to you of insanity, which in fact do exist in this case, in order for you to trace fully the connexion of all the concomitant circumstances in his bodily functions, in order for you to investigate fully, the effects which would result from an attack under a particular, previous train of thought, and of a person of his temperament, you should have seen and studied insanity and somnambulism, in their ten thousand different modifications of aspect. If then, the maladies of the mind may be to us generally, the most unknown of all diseases: we should be cautious as I before remarked, purely on principles of philosophical responsibility, lest we add another victim to the thousands, who, notwithstanding their insanity, and being as devoid of criminality as any of us, have been executed by christian tribunals. For their blood, inasmuch, as it lies not upon that noble system of jurisprudence the common law, surely it cries aloud for all concerned in the administration of justice to be cautious, to beware, lest in their ardour to punish a homicide, the dividing line between sanity and insanity be by them overleaped. But, Gentlemen, if we may not be acquainted with those nice distinctions of the peculiar varieties of somnambulism and insanity, depending on diversities of temperament, habits, intellectual abilities and the faculties principally affected—and all the immediate causes of these diseases, the knowledge of which would so much assist us, in doing justice in this case; still we know that all the powers of the mind are as liable to be affected by disease and disease of various kinds, as those of the body: and either the mind or body may be attacked in the whole of their powers at once, or in a single power. We know that the virtuous and vicious, the idle and industrious, the weak and strong, the rich and poor, are all liable to be precipitated without a moment's warning into the gulph of madness. In that horrid state, as well as somnambulism, the mind may be indeed considered as a city without walls, open to every insult, and paying homage to every invader; every idea that then starts, however absurd, however criminal or foolish, however untrue, becomes a reality: and reason and judgment, being dethroned, can make no resistance against the tyrannical invasion. It may come on suddenly or by degrees: it may last for months, hours, or only a few minutes. Insanity is often intermittent, and has exacerbation and remissions. There are fevers and fits of the mind as well as fevers and fits of the body. And we have the very best authority for saying, that in a state of perfect waking, and at a time when the mind is most finely strung, the presence of superabundant

acid in the stomach, dyspepsia however produced, may disturb its exquisite attunement and prostrate the reason. The valiant man, under this poor sympathy, will become for the time a coward, the philosopher a fool, the mild, furious and the amiable, blood-thirsty and terrible. Wonderfully and fearfully indeed are we made and slender is the tenure by which all of us hold our moral and intellectual existence. Nothing may be more inexplicable, but nothing is more certain, than that in the twinkling of an eye "all our best principles may by disease, by insanity be perverted, and a pious christian changed into a drunkard and abandoned felon: that others naturally of a mild and pacific disposition, appear, during their attacks, to be inspired by the very demon of mischief: some of a known probity, feel a blind propensity to steal: others feel a ferocious inclination to commit to the flames every thing of a combustible nature, or to imbrue their hands in human blood: modest females are seized with the feelings of the loose libertine, wretched persons think themselves popes, lords, ministers, kings and emperors." It may be produced by impressions that act primarily upon the heart, such as joy, terror, love, fear, grief, loss of liberty, severe disappointments, a violent and long continued exertion of any of the passions or the dread of some real or imaginary evil. It may be produced by great bodily exertion, by labor or accident, or it may be inherited, be born and bred as it were in a person, and burst out without any known adequate cause.

To show you, Gentlemen, the incomprehensible nature and operation of insanity, as well as the law on this branch of the case, I will read to you from Hale's Pleas of the Crown—from Lord Erskine's speech, on the trial of James Hadfield, and opinions and cases related by various medical authors of high repute.

"Accidental, or adventitious *dementia*,' (insanity) which proceeds from several causes; sometimes from the distemper of the humors of the body, as deep melancholy or adust choler; sometimes from the violence of disease, as a fever or palsy; sometimes from a concussion or hurt of the brain, or its membranes or organs; and as it comes from several causes, so it is of several kinds or degrees; which, as to the purpose in hand, may be thus distinguished: 1st, There is a partial insanity of mind; and 2nd, a total insanity.

The former is either in respect to things, *to be insane, as to this or that*; some persons, that have a competent use of reason, in respect of some subjects, are yet under a partial *dementia*, in respect of some particular discourses, subjects or applications. 1 Hale's P. C. 30.

"Again, this accidental *dementia*, whether total or partial, is distinguished into that which is permanent or fixed, and that which is interpolated, and by certain periods and vicissitudes; the former, is phrenesis or madness; the latter, is that which is usually called *lunacy*, for the moon hath a great influence in all diseases of the brain, especially in this kind of *dementia*; such persons, commonly, in the full and change of the moon, especially about

the equinoxes and summer solstice, are usually in the height of their distemper; and therefore crimes committed by them, in such their distempers, are under the same judgment as those whereof we have spoken, namely, according to the measure or degree of their distemper; the person that is absolutely mad, for a day, killing a man in that distemper, is equally not guilty as if he were mad without intermission."

"Again, this accidental *dementia*, whether temporary or permanent, is either the more dangerous and pernicious, commonly called *furor*, *rabies*, *mania*, which commonly ariseth from adust choler, or the violent inflammation of the blood and spirits, which doth not only take away the use of reason, but also superadds to the unhappy state of the patient, rage, fury, and tempestuous madness; or else it is such as only takes away the use and exercise of reason, leaving the person otherwise rarely noxious, such as is a deep *delirium*, *stupor*, memory quite lost, the phantasy quite broken or extremely disordered. And as to criminals, these *dementes*, are both in the same rank; if they are totally deprived of the use of reason, they cannot be guilty, ordinarily, of capital offences, for they have not the use of understanding, and act not as reasonable creatures, but their actions are, in effect, in the condition of brutes. *Ditto*. 31.

"And although in civil cases he that goes about to allege an act done in the time of lunacy, must strictly prove it so done, yet in criminal cases, (where the court is to be thus far of counsel with the prisoner, as to assist him in matters of law, and the true stating of the fact) if a lunatic be indicted of a capital crime, and this appears to the court, the witnesses to prove the fact may, and must, also be examined, whether the prisoner were under actual lunacy at the time of the offence committed." *Ditto*. 34.

"But in case a man in a phrenzy happens, by some oversight, or by means of the goalor, to plead to his indictment, and is put upon his trial, and it appears to the court upon his trial, that he is mad, the judge, in his discretion, may discharge the jury of him, and remit him to gaol, to be tried after the recovery of his understanding, especially in case any doubt appears upon the evidence, touching the guilt of the fact, and this *in favor of life*. And if there be no colour of evidence to prove him guilty, or if there be a pregnant evidence to prove his insanity, at the time of the fact committed, then upon the same favor of life and liberty, it is fit it should be proceeded in the trial, in order to his acquittal and enlargement. If a person, during his insanity, commits *homicide* or *petit treason*, and recovers his understanding, and being indicted and arraigned for the same, pleads not guilty, he ought to be acquitted; for, by reason of his incapacity, he cannot act with an evil mind."

"And it is all one, whether the phrenzy be fixed and permanent, or whether it were temporary, by force of any disease, if the fact were committed while the party was under that distemper."

"In the year 1668, at Aylesbury, a married woman of good reputation, being delivered of a child, and not having slept for many nights, fell into a temporary phrenzy, and killed her infant in the absence of any company; but company coming in, she told them she had killed her infant and there it lay; she was brought to goal presently, and, after some sleep, she recovered her understanding, but marvelled how, or why, she came thither. She was indicted for murder, and upon the trial, the whole matter appearing, it was left to the jury, with this direction--"That, if it did appear that she had any use of reason, when she did it, they were to find her guilty; but if they found her under a phrenzy, tho' by reason of her late delivery and want of sleep, they should acquit her; that had there been any occasion to move her to this fact, as to hide her shame; which is ordinarily the case, of such as are delivered of bastard children, and destroy them; or if there had been jealousy in her husband, that the child was none of his; or if she had hid the infant, or denied the fact, there had been evidence that the phrenzy was counterfeit; but none of these appearing, and the honesty and virtuous

deportment of the woman, in her health, being known to the jury, and many circumstances of insanity appearing, the jury found her not guilty, to the satisfaction of all that heard it." *Ditto.* 35, 36.

"Lord Coke, in speaking of the expression, *non compos mentis*, says, 'Many times, as here, the Latin word expresses the true sense, and calleth him not *amens*, *demens*, *furiosus*, *lunaticus*, *fatuus*, *stultus*, or the like, for *non compos mentis* is the most sure and legal.' He then says, '*Non compos mentis* is of four sorts: first, *ideota*, which, from his nativity, by a perpetual infirmity, is *non compos mentis*; secondly, he that by sickness, grief or other accident, wholly loses his memory and understanding; third, a lunatic, that hath sometimes his understanding, and sometimes not; *aliquando, gaudet lucidis intervallis*; and therefore he is called *non compos mentis*, so long as he hath not understanding."

"In the very recent instance of Mr. Greenwood (which must be fresh in his Lordship's recollection) the rule in civil cases was considered to be settled. That gentleman, while insane, took up the idea that a most affectionate brother had administered poison to him. Indeed, it was the prominent feature of his insanity. In a few months he recovered his senses. He returned to his profession as an advocate; was sound and eminent in his practice, and in all respects, a most intelligent and useful member of society; but he could never dislodge from his mind the morbid delusion which disturbed it; and under the pressure, no doubt, of that diseased prepossession, he disinherited his brother."

"The Attorney General, standing, undoubtedly, upon the most revered authorities of the law, has laid it down, that to protect a man from criminal responsibility, there must be a total deprivation of memory and understanding. I admit that this is the very expression used, both by Lord Coke and by Lord Hale; but the true interpretation of it, deserves the utmost attention and consideration of the court. If a total deprivation of memory was intended by these great lawyers to be taken in the literal sense of the words:—if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name, nor his condition, nor his relation towards others—that if a husband, he should not know he was married; or if a father, could not remember that he had children; nor know the road to his house nor his property in it—then no such madness ever existed in the world. It is idiocy alone, which places a man in this helpless condition; where, from an original mal-organization, there is the human frame alone, without the human capacity; and which, indeed, meets the very definition of Lord Hale himself, when, referring to Fitzherbert, he says; '*Idiocy or fatuity, a nativitate vel dementia naturalis*, is such an one as described by Fitzherbert, who knows not to tell twenty shillings, nor knows his own age, or who was his father. But in all the cases which have filled Westminster Hall, with the most complicated considerations—the lunatics, and other insane persons, who have been the subjects of them, have not only had memory, in my sense of the expression—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives but have in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought;—all their deductions within the scope of the malady, being founded upon the *immoveable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by fancy, as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy; these unhappy sufferers, however, are not so much considered, by physicians, as maniacs; but to be in a state of delirium as from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, but driven wholly from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly

incapable of considering their relations. Such persons, and *such persons alone* (except idiots) are *wholly deprived of their understandings*, in the Attorney General's seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, Reason is not driven from her seat, but distraction sits down along with her, holds her, trembling, upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense; in such cases the images frequently vary, but in the same subject are generally of the same terrific character. Here too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme diseases? Another class, branching out into almost infinite subdivisions, under which indeed the former, and every other case of insanity may be classed, is, where the delusions are not of that frightful character—but infinitely various and often extremely circumscribed;—Yet where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact: and these are the cases which frequently mock the wisdom of the wisest in judicial trials; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind; their conclusions are just, and frequently profound; but the premises from which they reason, when within the range of the malady, are uniformly false:—not false from any defect of knowledge or judgment; but because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack."

"*Delusion*, therefore, where there is no frenzy or raving madness, is the true character of insanity."

"Gentlemen, it has pleased God so to visit the unhappy man before you;—to shake his reason in its citadel;—to cause him to build up as realities, the most impossible phantoms of the mind, and to be impelled by them as motives irresistible; the whole fabric being nothing but the unhappy vision of his disease—existing no where else—having no foundation whatsoever in the very nature of things."

"I well remember, (indeed I never can forget it,) that since the noble and learned Judge has presided in this Court, I examined, for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad house, at Hoxton, for having imprisoned him as a lunatic; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact; but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemploy'd which long experience dictated; but without the smallest effect.—The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and Jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression; at last, Dr. Sims came into Court, who had been prevented, by business, from an earlier attendance; from him I soon learned that the very man whom I had been above an hour examining, and with every possible effort which Counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of mankind*; not merely at the time of his confinement, which was alone necessary for my defence; but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, "I am the Christ;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady; I could consume the day if I were to enumerate them; but there is one so extremely remarkable I cannot help stating it."

"A man of the name of Wood," said Lord Mansfield, "had indicted Dr. Monro for keeping him as a prisoner, (I believe in the same mad house at Hoxton,) when he was sane. He underwent the most severe examination by the defendant's Counsel without exposing his complaint; but Dr. Battye, having come upon the Bench by me, and having desired me to ask him what was become of the Princess whom he had corresponded with in cherry juice, he showed in a moment what he was. He answered, that there was nothing at all in that, because, having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, where the Princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination. "I immediately," continued Lord Mansfield, "directed Dr. Monro to be acquitted; but this man, Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the mad house, he indicted Dr. Monro over again, for the trespass and imprisonment in London, knowing that he had lost his cause by speaking of the Princess at Westminster; "and such," said Lord Mansfield, "is the extraordinary subtlety, and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the Bar, and all the authority of the Court, could not make him say a single syllable upon that topic, which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back."

"But it is said, that whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil*. I think I can presently convince you, that there is something too general in this mode of considering the subject; and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the Attorney General in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or inanimate being, (and such cases have existed,) and that upon the trial of such a lunatic for murder, you firmly upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed, to have been a potter's vessel; that it was quite impossible to doubt that fact, although to all other intents and purposes he was sane; conversing, reasoning, and acting, as men not in any manner tainted with insanity, converse, and reason and conduct themselves; suppose farther, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being?" 1 *Erskine's Speeches*, 499, *et seq.*

"Individuals are occasionally alienated only in the propensity to destroy. At Berlin, Mr. Mayer showed us a soldier whose general health was bad; he was very irritable, and much weakened by grief for the loss of his wife; he had every month a fit of violent convulsions, the approach of which he felt, accompanied with an immoderate propensity to kill; he then begged to be chained; but at the end of a few days the fit left him, the fatal propensity disappeared, and he himself fixed the period when he might be safely delivered. At Haina we met with a man who at certain periods felt an irresistible desire to maltreat others; he also knew his unfortunate propensity, and begged to be confined till his fit was over. A person of a melancholy turn of mind, having seen a criminal executed, was so much upset by the spectacle, that he suddenly became possessed with a propensity to kill, although he felt the strongest aversion to commit the act; he spoke of his deplorable situation, weeping bitterly, struck his head, wrung his hands, exhorted himself, and admonished his friends to take care and to fly; he even thanked them if they restrained him.

"Pinel has also frequently observed the fierce impulse to destroy, and speaks of one man who showed no mark of alienation in memory, imagination, or judgment, but who confessed that his propensity to murder was so involuntary and irresistible, that his wife, notwithstanding the love he bore her, was ~~swar~~ being immolated, he having only time to warn her to fly. In his lucid intervals he made the

most melancholy reflections, expressed horror at himself, and was disgusted with life to such a degree, that he several times attempted to put an end to his existence. 'What reason, said he, have I to cut the throat of the overseer of the hospital, who treats us with so much humanity? Yet in the moments of my fury I feel the same desire to attack him as others, and to thrust a dagger into his breast.' Another madman, who, during six months in the year, suffered periodical fits of fury, felt the decrease of the symptoms, pointed out the periods when the danger was over, and begged those about him not to set him free when he felt incapable of governing his blind impulse to destroy. In his calm intervals, he confessed, that during his fits, it would be impossible for him to restrain it; he said that if he met any one then, he saw, as it were, the blood circulating in their veins, and felt an irresistible desire to suck it, and to tear their limbs with his teeth, to do so more commodiously. Pinel also relates the history of a young female, who every morning had a fit of mania, during which she tore all that fell under her hands, and committed every sort of violence against those who came near her, so that they were obliged to restrain her by a straight-jacket; yet in the afternoon she repented of the actions of the morning, and asked pardon, which she always despaired of obtaining. Pinel quotes another example of a monk alienated by devotion, who thought he had one night seen the Virgin Mary surrounded by a choir of angels and happy spirits, and received an express order to kill a certain person whom he considered as an infidel; he would have executed this commission, had not his actions and manner betrayed him. The same author speaks of a credulous vine-dresser, who was so violently shaken by the sermon of a missionary, that he thought himself and his family damned to everlasting pains, if he did not save them by the baptism of blood, or martyrdom. He therefore first endeavored to murder his wife, who escaped with difficulty; he then killed two of his children, to procure them eternal life; and when confined to prison before trial, he cut the throat of a criminal in the same room with him, still with the intention of doing some expiatory act. His insanity being proved, he was ordered to be shut up in the Bicetre for life. Long solitary confinement exalted his imagination, and because he had not been executed, he fancied himself the Almighty; or, according to his own expression, the fourth person of the Trinity, sent to save the world by the baptism of blood. Having been confined for ten years he became tranquil, and was permitted to converse with the other convalescents in the court of the hospital. He passed four years in this way, and his health seemed restored, but he was again suddenly seized with his former superstitious and sanguinary ideas. The day before Christmas he conceived the project of offering up an expiatory sacrifice by killing all who might fall under his hands; he consequently got possession of a shoemaker's knife, with which he gave the keeper a thrust from behind, which fortunately slipped over the ribs; he then cut the throats of two other lunatics, and would have continued his homicides, had he not been overpowered and prevented.—1st Spurzheim's Phrenology, 143 et Seq.

Where, as in monomania, only one or two faculties are disordered, the rest remaining sound, the patient is at first conscious of the aberration of feeling or of thought which it produces, and employs all his powers to suppress and conceal the slightest appearance of its existence. Frequently he accomplishes this so successfully, that he goes on for months unsuspected, except by very close observers, and then, under some casual excitement, losing command of himself, gives full and sudden vent to his delusion in an act of manifest insanity. This often happens in monomania; and, as the act itself may either be a mere explosion of folly, of harmless passion, or of unaccountable apprehension and hatred, or be a direct infraction of the laws of morality, such as the perpetration of murder without an external motive, it behooves us to be extremely on our guard against condemning as a crime, what is in truth a *symptom* of insanity, and not to add the cruelty and ignominy of condemnation to the already severe visitations of disease. Dr. MARECHAL mentions a case in point to which I may refer. A lady, unhappily married, nursed her infant for three months, when she became sad and taciturn, and was often in tears. One day, sitting near the fire, she exclaimed with eagerness and agony, '*Snatch the child from me, or I will throw it into the flames,*' and then confessed that for a long time she had been struggling against an almost irresistible impulse to destroy the child, and that, on approaching a window or fire, the desire always returned. The infant was taken from her: she became melancholy, and, lamenting her unhappy propensity, attempted suicide. She recovered; but three years afterwards had a relapse, and in the second month of nursing was seized with the same unnatural propensity, and, after resisting its force for some time, again parted with the child, and, horrified at her own condition, repeatedly attempted suicide. Many instances have occurred to show, that although, as in this case, the desire to destroy the infant was almost the first symptom of insanity, yet

as reason seemed in other respects entire, the mother would have been executed as a criminal, had the act been accomplished, instead of being submitted to medical treatment to be restored to health.

While in the act of correcting the press, that active and able physician Dr. OTTO, of Copenhagen, has sent, for insertion in the next number of the Phrenological Journal, an instructive case of the same nature, from which, although not yet published, I am allowed to give a very full quotation. Dr. OTTO entitles it, 'Case of sudden propensity to murder and suicide,' and the narrative is as follows: FREDERICK JENSEN, workman, 37 years old, had for some time suffered from fits of giddiness, which always obliged him to keep hold of the nearest objects. In the spring of 1828 he lost a beloved daughter, which afflicted him very much. The state of his health was nevertheless *perfect, in mind as well as in body*, when he, one day (Sunday, the 23th of September, 1828,) after dinner, told his wife that he would take a walk with his son, a boy 10 years old. He did so, and went with him to the green which encircles the citadel. When he came there, he now relates, a strange confusion came over him, and it appeared like a matter of absolute necessity to him to drown his son and himself in the waters at the citadel. Quite unconscious of what he was doing, he ran towards the water with the boy in his hand. A man, surprised at his behavior, stopped him there, took the boy from him, and tried to persuade him to leave the water; but he became angry, and answered that he intended to take a walk, and asked "whether any body had a right to forbid him to do so?" The man left him, but took the boy along with him. An hour after, he was drawn out from the water, into which he had thrown himself, and taken to prison. As he still showed symptoms of insanity, he was bled and purged; and two days after was brought into the hospital, and committed to the care of my friend Dr. WENDT, who has perfectly cured him, and who kindly afforded me the opportunity to see and to speak with the patient.

He now very quietly tells the whole event himself, but is not able to explain the cause of his suddenly arising desire to kill himself and the boy, whom he loved heartily. This cause is only to be sought in congestion of blood to the brain, the same which before had caused his giddiness; and whether we adopt an organ of Destructiveness in the brain or not, it is to be assumed, that the propensity to kill himself and the son arose from a morbid excitation of a certain part of the brain. The disposition to congestion originated from a fall he suffered on the head in the year 1828.

We ask, whether any body, in this case, would have admitted responsibility of crime, if the patient really had executed his plan to murder his son? This case affords a good illustration of my preceding statement, that frequently the crime is only the first palpable sign of existing insanity, and shows the necessity of scrupulous inquiry being instituted, where an unnatural act is committed by an individual who would previously have revolted at it.

Combe on mental derangement, 226 et Seq.

TRIAL OF HARRIET CORNIER.

The case of this female produced an uncommon sensation at the time, and it has been publicly asserted, on the best authority, that the reports of her trial led to the commission of several similar crimes.

H. Cornier, a female servant, aged 27 years, had been of a cheerful and rather gay disposition, till the month of June, 1825, when she was perceived to become taciturn and melancholy. Not giving satisfaction to her employers, she was discharged their service, and from that period her melancholy increased to a kind of stupor. She would not disclose to her relations the cause of her mental dejection. One morning in September (1825) she came to the house of a female cousin, pale and agitated, stating that she had just made an attempt to drown herself in the Seine, but was prevented by some persons on the spot. No information could be drawn from her, as to the cause of this rash attempt. On the 27th October, her friends procured her a place, in the house of Mad. Fournier, but there, she still presented the same characters of melancholy and despondency.

On the 4th November, Harriet's mistress went out to walk, and desired the maid to prepare some dinner by a certain hour. She was also desired to procure some cheese at a fruiterer's shop in the neighborhood. The woman who kept this shop had two children, one seven and the other nineteen months old. There existed between the mother of these children and Harriet Cornier neither intimacy, quarrel, or source of jealousy. When Harriet went to the shop at times, she al-

ways caressed and praised the elder child, named Fanny, and repeated these caresses on the day in question, with more than usual ardour, at the moment when, it was evident, she meditated the destruction of the innocent infant. The mother of Fanny informed Harriet that, as the weather was fine, she was going to take a walk with the child, and Harriet begged permission to amuse her while the mother put on some articles of dress for the intended promenade. This was complied with, though reluctantly, by the mother, who had no sooner gone up stairs than Cornier hastened home to her master's house with the child, and laying it on a bed, instantaneously severed its head from its body with a large kitchen knife! This bloody deed was done with such rapidity, that the infant had not time to utter a single cry! On a subsequent examination this infatuated creature declared that, during the murder, she felt no particular emotion—neither a sense of horror, of joy, or of fear. She confessed, however, that, a few minutes after the commission of this frightful act, she did feel a momentary remorse of conscience, which soon subsided. Leaving the decapitated corpse where it was, she first went into the bed-room of her mistress; but soon left that, and repaired to her own chamber, where she remained full too hours. By this time the mother of the infant arrived, demanding her child. Harriet coolly answered "that the child was dead." The mother at first thought Harriet was in jest, but soon saw something in her countenance which struck a horror through her frame. She rushed past Cornier, and the beheaded corpse of her infant and the bed and floor deluged with blood, presented themselves to her view! At this moment Cornier snatched up the head of the murdered child, and tossed it through a window into the street. The father now came running to the house, and the first thing he saw was his child's head, which the wheel of a fiacre had just gone over in the street! All this time the murderer was coolly seated on a chair in the room near the body of the child, and making no attempt to escape. The commissary of police arriving, found her in a state of stupor. She denied no part of the act, but detailed all the circumstances—even the premeditation of the murder, and the arts which she had used to lull the suspicious of the mother, and enveigle from her the devoted victim of her bloody design. On being closely and repeatedly interrogated as to her motives for this terrible act, she either could or would not assign any other than that it was her destiny. When asked for her motive in hurling the head into the street—she answered that it was for the purpose of attracting public attention, and of drawing towards the house a sufficient number of witnesses to prove that she alone was the murderer. Among the spectators which soon collected on the spot, were several medical men, who declared it as their opinion at the inquest which was held, that Cornier was monomaniac, or insane on some particular point. She continued in a state of stupor, yet answered questions, though slowly, with precision and correctness. On the most minute investigation into her history, no trace of mental alienation could be detected, with the exception of the supposed attempt which Cornier had made to throw herself into the Seine. As a remarkable instance of the imperturbable state of the prisoner's mind, it was ascertained that the menses were flowing at the period of the assassination, and continued to do so, without the slightest interruption from the horrible act which she had just perpetrated, or the fear of any consequences which might result from thence.

In answer to interrogatories before a judge or magistrate, she averred that she was not ill—that she had no cause for chagrin or melancholy—that she had been married about seven years previously, but not happily so—that she attempted to drown herself because she was tired of changing her situation so often from one service to another—that the inclination to destroy the child came suddenly upon her, and that she never before had such an inclination—that she experienced no particular emotion in perpetrating the deed, whether of gratification or repugnance—that she felt a momentary horror when the blood was flowing about—she was perfectly conscious of the nature of the act she was committing—that the fear of God did not deter her, because she then believed that there was no God—that she knew homicide deserved death—that she desired death, since life was to her insupportable. When asked finally if she persisted in acknowledging that she committed the murder, she answered steadily in the affirmative.

She was tried, for the first time, on the 27th February, 1826. She then appeared in a state of great nervous irritation—her limbs trembling—her eyes fixed—and her intellects in a state of stupor. A few days previously a medical commission, consisting of Drs. Esquirol, Adelon, and Leveille, was deputed to examine into the moral and physical condition of Harriet Cornier, and after repeated investigations, collectively and separately, they reported their inability to detect any sign or proof

of mental alienation in the prisoner. But they properly observed that, in many cases, it is extremely difficult to detect insanity—it requiring a long intimacy with the individuals, and numerous opportunities of watching them in all their varying states of temper and disposition. In fine, they reported that, although they were unable to adduce any proof of Cornier's insanity, they could not pronounce her to be free from any aberration of intellect.

This report being conclusive, the advocate-general remanded the prisoner for another session. She was conducted to the Salpetriere, and there subjected to minute observation for three months, when M. Esquirol and his confreres made the following report:—namely, “that the most attentive observance of Cornier by themselves and the nurse could not detect any symptom of general or partial insanity. She was plunged in profound melancholy, but this might arise from the circumstances in which she was placed, and which she was perfectly capable of appreciating.” But the doctors concluded their report with a wise reservation, that they could not vouch for her perfect sanity, especially if it was proved on trial that the melancholy, taciturnity, and other symptoms of a disturbed mind existed previously to the commission of the act for which she was now arraigned.

The prisoner was again put on her trial, the 24th June, 1826. She was seized with a fit of trembling on being led into court, and seemed to pay little or no attention to the act of accusation when read before her. Her answers to the interrogatories of the president were brief and in a low voice. Several witnesses deposed, that long before the commission of the crime, the prisoner had expressed herself as tired and disgusted with life—that she would sometimes laugh out loudly, and at others cry without any ostensible, or at least adequate cause. Several physicians were examined, among whom were Esquirol and Adelon, but they could not make up their minds to any certain conclusion, on the subject of Cornier's sanity or insanity. There was a great deal of reasoning and ingenuity adduced on both sides—the prosecution and defence—and the decision of the jury was, that Harriet Cornier had committed homicide *voluntarily* but negatived the accusation of *premeditation*. The punishment was hard labour for life, and to be branded with the letters T. P. She heard the sentence without evincing the slightest degree of emotion.

We shall not follow M. Georget in his numerous remarks on this interesting trial. He properly criticises the advocate general, who, in an elaborate speech for the prosecution, ridiculed the idea of a person being insane on a single point—in fact, he characterised the doctrine of monomania as a chimera—a modern resource for rescuing the guilty from the hands of justice—or an excuse for depriving arbitrarily a citizen of his liberty. It is useless to expend a line in refutation of this absurd assertion of M. Dupin. Unfortunately monomania is no chimera of the imagination—nor is it a modern disease. It has existed in all ages; but formerly it was concealed under the denomination of melancholia, or hypochondriasis, of which in fact, it is only a high degree. For this reason, there can be no doubt that thousands have suffered for crimes, or rather fatal actions committed during moments when reason had no dominion over the individual. We think our readers will agree with us that, although the physicians appointed to inspect the moral and physical condition of Harriet Cornier, could not detect any specific symptom or proof of insanity, yet reason and common sense, independently of any medical knowledge, would come to the conclusion, from the facts of the case, that this wretched female was insane at the time she committed the fatal act for which she was tried. We agree with M. Georget in the following sentiment:—“Un acte atroce, si contraire a la nature humaine, commis sans motif, sans interet, sans passion, oppose au caractere naturel d'un individu, est evidemment un acte de demence.”* The jury ought to have acquitted her on the plea of insanity—and the punishment should have been imprisonment, not hard labour, for life. We are convinced that this would have been the case had the prisoner been tried in an English court.

M. Georget coincides with Esquirol and many other physicians that the reports of these cases of suicide, homicide, and infanticide, tend greatly to produce repetitions of the same mournful scenes. Where there is any tendency to monomania, the recitals of such events accelerate the march of this disposition, and lead to explosions of a similar kind. In this respect police reports, and trials for murder and infanticide, have their disadvantages, as well as their advantages.

10th Vol. *Medico Chirurgical Rev.*

*A single act of atrocity, if contrary to human nature, committed without motive, without interest, without passion, opposed to the natural character of the individual, is evidently an act of madness.

MISCELLANEOUS CASES.

3. *Case of Mons. Tristel.* In January 1821, there was to have been executed at ROUEN, a young man of 17 or 18 years of age, belonging to a respectable family in easy circumstances, for the crime of attempting to poison several of his relations: but he anticipated the executioner by putting himself to death by the same means. Dr. Vingtrinier, surgeon of the prison of Rouen, examined this young man's body, and after investigating the immediate cause of death—arsenic taken into the stomach—proceeded to dissect the brain, and there he found unequivocal evidence of chronic inflammation of the membranes, of considerable standing. The following were some of the principal facts which came out on Tristel's trial. First, the prisoner had experienced, in his infancy, great pains in his head, and much tendency to *somnolency*—2d, at the age of ten years he became triste and melancholy, preferring solitude to society, and evincing a strong propensity to torment animals, and break and destroy all the articles or objects of amusement belonging to his comrades. At the age of puberty, his intellectual faculties were but imperfectly developed; and it was observed that he was very much in the habit of calculating sums of money, and employing himself in speculations which showed that he entertained a strong inclination to amass riches. It appeared also, that this dominant idea engendered a secret jealousy towards his brothers and sisters—and ultimately the horrible design of poisoning not only them, but also his parents! The family were numerous, and many of his brothers and sisters married and living at a distance. Some of them also had families of their own, so that to make himself the sole heir of the paternal property, he saw it necessary to destroy a great number of individuals—at least fifteen or twenty! In the year 1820, he contrived a reunion of almost the whole family circle, at his father's house, with the intent to poison the whole! Some days previously, he procured, at a chemist's shop, a large quantity of arsenic, under some pretence or other, which he distributed, the day of the banquet, in the soup and other dishes which were preparing for dinner. The quantity of arsenic thus distributed, was so great as to cause instant vomitings in those who partook of the victuals, in consequence of which, no person died of this horrible attempt.

It is properly supposed by both Dr. Vingtrinier, and M. Georget, that such a horrible and *extravagant* project could not have been engendered in a sane mind—and the appearances, on dissection, proved almost to a demonstration, the insanity of the individual. His condemnation therefore to death, though naturally to be expected from a jury who could not comprehend the nature and effects of monomania, was probably not consistent with strict justice.

4. *Case of Matricide.* At Bergerae, in the course of March 1826, a strange and horrible matricide was committed by a young man of good education, and who was greatly attached to an aged and infirm mother, whom he attended and nursed with the most filial solicitude. The parent being threatened with death, by some acute disease, the son became greatly agitated, and plunged into profound grief.—He fasted and prayed without ceasing, for the recovery of his parent. On the day before the commission of the dreadful act he appeared more tranquil than usual.—In the evening he prayed in the presence of his mother and the servants, and went to bed without evincing the slightest aberration of intellect. He had not been more than a quarter of an hour, however, in bed, before he started up and repaired to his mother's chamber, where he announced to her, with apparent transports of joy, that he was an angel commissioned by God to deliver her from all her sufferings. He had scarcely pronounced these words, when he seized his parent by the throat, dragged her out of the bed, and quickly put a period to her existence by repeated blows with a solid chair which was in the room! The unfortunate wretch was seized and put into prison; but it required four men to guard him night and day, in order to prevent his destroying his own life, by dashing himself against the walls and floor of the gaol. The adjudication of this case is *not given*, but we suppose no jury would think of bringing in any other verdict than that of insanity. Here is an instance of *moral* circumstances overcoming the understanding, and producing the same effect as physical lesion of the brain. It is a very different thing, however, from that propensity to evil which comes along with existence, and seems to depend on organization. The youth who was thus deprived of reason by a too anxious filial solicitude, stands in a very different light from the youth who committed parricide from unrestrained indulgence of vicious propensities. The latter might perhaps deserve mercy from a tribunal of justice—but the former is entitled to commiseration and sympathy.

It appears that the tribunals of justice and the crown lawyers in particular in France, are averse to the admission of such a state as homicidal, suicidal, or infanticidal monomania; and the various trials of individuals seem to authorise this conviction of our continental neighbors. M. Georget raises his voice against this injustice in the criminal code of his country, and not without considerable effect.—He justly observes that the monomaniac may preserve a very fair portion of intellect on every other subject but that which is directly connected with his hallucination. The dominant idea may also change, and vary its object. If you disperse one chimera from the mind, another arises, and these exclusive illusions may thus succeed each other *ad infinitum*. On this account it is very difficult sometimes to determine whether such and such an act has reference to the mental illusion that, at the moment, possessed the individual.

Again:—The melancholic insane, or the monomaniac, may preserve a profound silence, for years, on the subject of their hallucination. Pinel mentions the following fact:—A commissioner went to the Bicetre, for the purpose of liberating those whom he considered cured. He particularly interrogated an old vine-dresser, who evinced not the smallest symptom of mental alienation during a minute examination. When the proces-verbal, however, was delivered to the peasant for his signature, before being discharged, he very coolly signed himself JESUS CHRIST, and then broke off into ridiculous asseverations respecting his own divine character.

5. *Case of Homicide.* On the 12th February, C. E. N. aged 30 years, murdered an infant of four years of age, (near the gates of Konigsberg,) with whom she had travelled in a voiture from one of the neighbouring villages. The culprit continued to draw the conductor of the voiture a little aside, and then with a large knife which she had concealed about her person since the preceding day, she severed completely the child's head from her body! The conductor was the father of this child, whom she persuaded to bring with him on the journey. The female immediately confessed the act, and delivered herself up to public justice. She then declared, and always kept to the following story. She had had a quarrel with a neighboring female, by whom she was cited before a magistrate, who threatened a farther prosecution at the ensuing sessions. In order to avoid this disgrace, she took to flight, and wandered about for some days, without any fixed design or resolution. At length she came to the house of a peasant, with whom her brother had some acquaintance, and there she sojourned for some time, under various excuses, but without betraying the least symptom of melancholy. It was in this situation that she suddenly formed the resolution of assassinating her hostess's child, notwithstanding the many marks of hospitality and kindness which she had received at her hands. This was the infant which she murdered, and the following was the only reason she could offer for the sanguinary act. "The peasant's daughter was an *only child*—so was she herself an *only child*—and yet she was always very unhappy and unfortunate: The child would most likely be so too, and, therefore she determined to take its life."

It came out in evidence on the trial, that this woman had, more than once during the preceding two years, exhibited symptoms of mental derangement, and means were taken to place her under restraint, but she had evaded this by flight. Afterwards she became apparently well, though somewhat reserved, and continued so up to the time of the citation before the magistrate, as above detailed. In a medical consultation, the prisoner was considered as guilty of murder, because she had shown a *premeditation* in the affair, and, consequently, that she was not protected by insanity, which they admitted to exist. The judges, however, were of a different opinion, and ordered her to be confined as a maniac. This happened in the year 1788, and it appears that a revolution has since taken place; for the medical profession, in France, have come to the proper way of thinking, while the judges and lawyers have reverted back to the less enlightened path of the Konigsberg physicians. It is clear, we think, that in this case, there was a *premeditation* founded on an *insane notion*, which greatly alters the case from a premeditation in a sane mind. Upon the whole, we consider the judges were right in their decision, though certainly it was a very nice point to decide.—10th Vol. M. C. R.

Case 1. The individual was a surgeon who had served in several campaigns against the French, and who afterwards studied midwifery under the aforesaid Professor. He always appeared of a lively and cheerful disposition, till certain pecuniary matters ruffled his temper and rendered him thoughtful and melancholy. He was now frequently observed to be studying the Scriptures, and reciting passages from the Bible. He was happily married, and had four children. One morning

he summoned his wife and children into the court-yard of his house, and there informed them that it was his intention to destroy them all, and afterwards himself! He descanted coolly on the propriety of homicide, and told his wife she must first be a spectatress of the destruction of her children, and then her own turn would come. The woman appears to have been possessed of great presence of mind, and acted with great prudence on such a trying occasion. She entirely coincided in the justness of her husband's sentiments, and cheerfully agreed to the proposed tragedy. But she appeared suddenly to recollect that it would be proper for herself as well as her children, to confess and take the sacrament, previously to appearing before their final judge—a ceremony which would necessarily require several days preparation. The monomaniac replied that this was a reasonable and proper procedure; but, in the mean time, it would be absolutely necessary that he took some person's life that day. For the purpose of effecting this, he instantly set off for Salzburg. His wife, having placed the children in security, made the best of her way to the above-mentioned town, and went directly to Professor O. the friend of her husband, for advice. The monomaniac had already been there and not finding the Professor at home, had gone away. The woman now recollected, and told the Professor that her husband had threatened *his* life, for some imaginary slight which he had experienced; but, at that time, she thought he was in jest. About mid-day, the monomaniac came back to the Professor's residence, and appeared quite calm and peaceable. The Professor invited him to go and see the hospital of the town, where he had a curious dissection to make, and they sat down to eat some refreshments before proceeding thither. At this repast the monomaniac informed his host that he had lately been most immoderately disposed to commit homicide—and that he had actually murdered a peasant that morning on his way to the town! He confessed also that he had entered a coffee-house for the purpose of committing a second act of this kind, but had been diverted from his purpose. The murder of the peasant was a fiction, as was afterwards proved. The Professor now turned the discourse to other subjects—and on all other topics, the monomaniac was perfectly rational. They now set off for the hospital, and in their way thither, the monomaniac met with an old acquaintance and fellow-campaigner. While they were greeting each other, the monomaniac suddenly struck his friend a violent blow on the pit of the stomach, exclaiming, in a burst of laughter, that he had done it for him, as he had hit the *cœliac* plexus! The Professor reprimanded him in strong terms for this dishonourable and cruel act, at which the monomaniac was much surprised—and informed his preceptor that he was irresistibly led to commit homicide, and cared not who was the victim of this propensity. The Professor now asked him somewhat tauntingly, if he had not a design against *his* life? The monomaniac acknowledged it; but added that he had sufficient control over himself to prevent the destruction of his benefactor. The Professor took his arm, and they proceeded to the hospital, where the monomaniac was immediately confined. He almost instantly became furiously maniacal, and, in a few months afterwards died.

Another case is related by the same author, which merits the attention of the medico-legal inquirer.

Case 2. A female who was received into the Lying-in-hospital, to which our author was chief accoucheur, requested a private conference with the doctor previously to her accouchement. She appeared in a state of great agitation and embarrassment, and presented many of those phenomena which usher in the *mania post partum*. When the attendants were all withdrawn, she begged earnestly that Dr. O. would not leave her in the same chamber with other women and their *infants*, as it would be utterly impossible for her to resist the propensity she felt to destroy the *latter*. Her request was granted, and she was very attentively watched. Her delivery was easy, and the child was kept from her, and afterwards sent to her mother. The young woman on leaving the hospital, went as a servant in the town, and would not return to her mother's house, lest she should be tempted to destroy her infant. She declared that the sight of a very young infant kindled up an irresistible propensity to destroy its life. This young woman was a peasant, who had been seduced, and who had never led a dissolute life, or was, in any way, of corrupt manners: She had not received any reproaches or ill treatment from her parents, during pregnancy—nor was there the least cause for anxiety on account of the child, as her mother had engaged to provide for it. In fact, our author could discover no tangible cause for this infanticidal disposition. She entered into the service of a clergyman, and enjoyed good health. Some time after-

wards our author questioned her on the above subject, and she informed him that she had nearly lost all propensity to infanticide. We have no doubt that it is in this way many cases of infanticide occur, where verdicts are given against the mother by an ignorant and prejudiced jury.

INSTANCE OF INFANTICIDAL MONOMANIA.

In a small town near Copenhagen, a horrible case (of the above has recently) occurred, the particulars of which are published by Dr. Otto, in the last (17th) number of the Phrenological Journal. The unhappy criminal (if such a monomaniac can be termed) is a Peter Nielsen, aged 47 years, the father of seven children, of which he drowned, at one time, FOUR!—He appears to have experienced some misfortunes, but was not in positive want of the necessaries of life at the moment when he committed the horrid deed. It is evident, from the testimony of several witnesses, who conversed with him, both before and after the transaction, that he was not intoxicated, nor in the least agitation of mind. He was, on the contrary, placid and tranquil. No domestic altercations, of any moment, had occurred—but he was disconcerted at not readily getting a new lodging on being turned out of that which he previously inhabited. In short, no external or obvious motive to this terrible act of infanticide could be traced. He evinced no disposition to melancholy, “nor had he read any mischievous books.”—His love to his children was testified by all his acquaintance. He confessed that the idea of killing his children came into his head on the morning of the day that he put the idea into execution—and that the impulse was quite irresistible. He determined to drown the three younger boys, and to spare the daughter, who was older. But the unfortunate girl insisted on accompanying her father and brothers in the walk which he proposed, and though he endeavoured to persuade her to return, she would not. He averred that his motive for destroying the children was the fear of not being able to maintain them. He wished to spare the girl—not because he loved her more, but because she had made more progress, and was better able to provide for herself. Having arrived at a pond, he first embraced his children, and then hurled them all into the water! He stood by unmoved, and saw them struggle and sink! He then returned quietly to the town, and there disclosed the whole affair. He was conducted back to the pond, and saw the dead bodies of his children, without evincing any emotion of mind. For a moment he wept, when he saw the bodies opened, (for the purpose of medico-legal proof of the kind of death,) but soon regained his tranquility. He affirmed that he did not destroy his offspring in order to procure happiness for them in Heaven, nor from any desire to be put to death himself, as he wished to live.

We think every enlightened mind will view this case as one of monomania. Some ungovernable impulse, without rational purpose,—some hallucination of reason, must have urged him to the unnatural act. We agree with Dr. Otto, that this infanticidal impulse by no means proves that the parent was originally or naturally deficient in the love of his offspring.—“Every faculty, even the strongest, may be overwhelmed and overcome by a strong passion—or insanity in another faculty.” How many honest and moral men do we see, in the hour of temptation, yield to this or that passion? Dr. Otto endeavors to account for the physical cause of this monomania, by supposing that a temporary congestion of blood, or excitement, takes place in a portion of the brain, for instance, in the organ of *destructiveness*—thus causing an involuntary or invincible propensity to kill. In whatever way we account for the *cause*, we are convinced that monomania existed at the time when this infanticide was committed, and that the verdict should be accordingly.—13th Vol. *Med. Chi. Rev.*

A very powerful man, above the ordinary stature, who in his youth had been subject to epileptic attacks, and frequently to intervals of sullen abstraction, which increased after the epileptic fits had subsided, became suddenly furious, and during the transports of his disorder, destroyed two children and a woman. For this act, there appeared to be no motive. He was ordered to be confined, where he continued until his death. For many years during this seclusion, I had constant oppor-

tunities of seeing and conversing with him. He was ordinarily in a very tranquil state, and did not discourse irrationally;—indeed there was no particular subject on which his mind appeared to be disarranged; nor were there any persons against whom he entertained an aversion.

There are, however, many instances of decided insanity, where the patient can not only write and read, but converse and argue closely and accurately on every subject, except that on which he is insane. Every body knows when a man is stark-mad: it is my object to describe a man in that state of insanity, when a common observer, or even a person accustomed to insane persons, can with difficulty discover that he is not of sound mind. Learned and respectable physicians have themselves been deceived; and, from being unacquainted with the peculiar hallucination of the patient, have pronounced him sane, when it was well known to those acquainted with the subject of his insanity, that he was a proper object for the restraint of a mad-house.

There is a madness which shows itself in words, and another in actions. A lunatic may be coherent in conversation, but insane in conduct; he may be rational when under the restraint of a mad house; but when released, and at liberty to act according to the impulse of his hallucination, will show, by his conduct, that he is really insane.

It is a false notion, that madmen cannot reason; they often reason with accuracy on many subjects, and carry into execution plans, which require subtlety and long-continued dissimulation to mature: nay, there are instances of their having composed regular and elegant poetry on the subject of their own infirmity; but some are in a miserable state of most abject brutality.

A lunatic having received, or fancied he had received, an injury from his keeper, at the Lunatic Asylum at Manchester, threatened to be revenged, for which he was punished by confinement; he was afterwards a patient in Bethlem Hospital, and gave Mr. Haslam an account of the transaction, of which the following is an abbreviation: "Not liking this situation, I was induced to play the hypocrite; I pretended extreme sorrow for having threatened him, and, by an affectation of repentance, induced him to release me. For several days I paid him great attention, and lent him every assistance; he seemed much pleased with the flattery, and became very friendly in his behaviour towards me. Going one day into the kitchen, where his wife was busied, I saw a knife (this was too great a temptation to be resisted;) I concealed it, and carried it about me. For some time afterwards the same friendly intercourse was maintained between us; but as he was one day unlocking his garden door, I seized the opportunity, and plunged this knife, up to the hilt, in his back."—*Medical Jurisprudence*.

"We sometimes meet with persons equally sane upon all subjects, except one, in whom a word, or an action, that revives the single subject of derangement never fails to involve whole mind in disorder." *Ditto* 325.

The case related in Silliman's *Journal of Science* page 432, vol. 1, shows the suddenness of attack, as well as, cessation of the disease, and that it may last an indefinite period.

A lady in New England, of a respectable family, was for a considerable period subject to paroxysms of delirium. These paroxysms came on instantaneously, and after continuing an indefinite time, went off as suddenly; leaving her mind perfectly rational. It often happened that when she was engaged in rational and interesting conversation, she would stop short in the midst of it, become in a moment entirely delirious, and commence a conversation on some other subject, not having the remotest connexion with the previous one, nor would she advert to that during her delirium. When she became rational again, she would pursue the same conversation in which she had been engaged during the lucid interval, beginning where she had left off. To such a degree was this carried, that she would complete an unfinished story, or sentence, or even an unfinished word. When her next delirious paroxysm came on, she would continue the conversation which she had been pursuing in her preceding paroxysm; so that she appeared as a person might be supposed to do, who had two souls, each occasionally dormant, and occasionally active, and utterly ignorant of what the other was doing.

Such, Gentlemen, are some of the sudden and inexplicable appearances and durations of insanity and some of its woful effects in all ages and countries from the days of Saul to the present time, although like the human face it assumes an infinite variety of shapes and forms.

In regard to Somnambulism, which is allied to insanity, and frequently, as it were, runs into it, Abercrombie says:

“ The Somnambulist, is, to a certain degree, susceptible of impressions from without, through his organs of sense; not however, so as to correct his erroneous impressions, but rather to be mixed up with them.

The first degree of somnambulism generally shows itself by a propensity to talk during sleep; the person giving a full and connected account of what passes before him in dreams, and often-revealing his own secrets or those of his friends. Walking during sleep is the next degree, and that from which the affection derives its name. The phenomena connected with this form are familiar to every one. The individual gets out of bed; dresses himself; if not prevented, goes out of doors; walks frequently over dangerous places in safety; sometimes escapes by a window, and gets to the roof of a house; after a considerable interval, returns and goes to bed; and all that has passed conveys to his mind merely the impression of a dream. A young nobleman, mentioned by Horstius, living in the citadel of Breslau, was observed by his brother, who occupied the same room, to rise in his sleep, wrap himself in a cloak, and escape by a window to the roof of the building. He there tore in pieces a magpie's nest, wrapped the young birds in his cloak, returned to his apartment, and went to bed. In the morning he mentioned the circumstances as having occurred in a dream, and could not be persuaded that there had been any thing more than a dream, till he was shown the magpies in his cloak. Dr. Prichard mentions a man who rose in his sleep, dressed himself, saddled his horse, and rode to the place of a market which he was in the habit of attending once every week; and Martinet mentions a man who was accustomed to rise in his sleep and pursue his business as a saddler. There are many instances on record of persons composing during the state of somnambulism; as of boys rising in their sleep and finishing their tasks which they had left incomplete. A gentleman at one of the English universities had been very intent during the day in the composition of some verses which he had not been able to complete; during the following night he rose in his sleep and finished his composition; then expressed great exultation, and returned to bed.

In these common cases the affection occurs during ordinary sleep; but a condition very analogous is met with, coming on in the daytime in paroxysms, during which the person is affected in the same manner as in the state of somnambulism, particularly with an insensibility to external impressions; this presents some singular phenomena. These attacks in some cases come on without any warning; in others, they are preceded by a noise or a sense of confusion in the head. The individuals then become more or less abstracted, and are either unconscious of any external impression, or very confused in their notions of external things. They are frequently able to talk in an intelligible and consistent manner, but always in reference to the impression which is present in their own minds. They in some cases repeat long pieces of poetry, often more correctly than they can do in their waking state, and not unfrequently things which they could not repeat in their state of health, or of which they were supposed to be entirely ignorant. In other cases, they hold conversation with imaginary beings, or relate circumstances or conversations which occurred at remote periods, and which they were supposed to have forgotten. Some have been known to sing in a style far superior to any thing they could do in their waking state; and there are some well-authenticated instances of persons in this condition expressing themselves correctly in languages with which they were imperfectly acquainted. I had lately under my care a young lady who is liable to an affection of this kind, which comes on repeatedly during the day, and continues from ten minutes to an hour at a time. Without any warning, her body becomes motionless, her eyes open, fixed, and entirely insensible; and she becomes totally unconscious of any external impression. She has been frequently seized while playing on the piano, and has continued to play over and over a part

of a tune with perfect correctness, but without advancing beyond a certain point. On one occasion, she was seized after she had begun to play from the book a piece of music which was new to her. During the paroxysms, she continued the part which she had played, and repeated it five or six times with perfect correctness; but, on coming out of the attack, she could not play it without the book.

During the paroxysms the individuals are, in some instances, totally insensible to anything that is said to them: but in others, they are capable of holding conversation with another person with a tolerable degree of consistency, though they are influenced to a certain degree by their mental visions, and are very confused in their notions of external things. In many cases, again, they are capable of going on with the manual occupations in which they had been engaged before the attack. This occurred remarkably in a watchmaker's apprentice mentioned by Martinet. The paroxysms in him appeared once in fourteen days, and commenced with a feeling of heat extending from the epigastrium to the head. This was followed by confusion of thought, and this by complete insensibility; his eyes were open, but fixed and vacant, and he was totally insensible to any thing that was said to him, or to any external impression. But he continued his usual employment, and was always much astonished, on his recovery, to find the change that had taken place in his work since the commencement of the paroxysm. The case afterward passed into epilepsy.

Two females, mentioned by Bertrand, expressed themselves during the paroxysm very distinctly in Latin. They afterward admitted that they had some acquaintance with the language, though it was imperfect. An ignorant servant-girl, mentioned by Dr. Dewar, during paroxysms of this kind, showed an astonishing knowledge of geography and astronomy; and expressed herself in her own language in a manner which, though often ludicrous, showed an understanding of the subject. The alternations of the seasons, for example, she explained by saying that the earth was set *a-gee*. It was afterward discovered that her notions on these subjects had been derived from over-hearing a tutor giving instructions to the young people of the family. A woman who was some time ago in the Infirmary of Edinburgh, on account of an affection of this kind, during the paroxysms mimicked the manner of the physicians, and repeated correctly some of their prescriptions in the Latin language.

Another very singular phenomenon, presented by some instances of this affection, is what has been called, rather incorrectly, a state of double consciousness. It consists in the individual recollecting, during a paroxysm, circumstances which occurred in a former attack, though there was no remembrance of them during the interval. This, as well as various other phenomena connected with the affection, is strikingly illustrated in a case described by Dr. Dyce of Aberdeen, in the Edinburgh Philosophical Transactions. The patient was a servant-girl, and the affection began with fits of somnolency, which came upon her suddenly during the day, and from which she could, at first, be roused by shaking, or by being taken out into the open air. She soon began to talk a great deal during the attacks, regarding things which seemed to be passing before her as a dream; and she was not at this time sensible of any thing that was said to her. On one occasion she repeated distinctly the baptismal service of the Church of England, and concluded with an extemporary prayer. In her subsequent paroxysms she began to understand what was said to her, and to answer with a considerable degree of consistency, though the answers were generally to a certain degree influenced by her hallucinations. She also became capable of following her usual employments during the paroxysm; at one time she laid out the table correctly for breakfast, and repeatedly dressed herself and the children of the family, her eyes remaining shut the whole time. The remarkable circumstance was now discovered that during the paroxysm she had a distinct recollection of what took place in former paroxysms, though she had no remembrance of it during the intervals. At one time she was taken to church while under the attack, and there behaved with propriety, evidently attending to the preacher; and she was at one time so much affected as to shed tears. In the interval she had no recollection of having been at church; but in the next paroxysm she gave a most distinct account of the sermon, and mentioned particularly the part of it by which she had been so much affected.

The paroxysms generally continued about an hour, but she could often be roused out of them; she then yawned and stretched herself, like a person awaking out of sleep, and instantly knew those about her. At one time, during the attack, she read distinctly a portion of a book which was presented to her; and she often sung,

both sacred and common pieces, incomparably better, Dr. Dyce affirms, than she could do in the waking state.—*Abercrombie on Intellectual Powers, page 237, et Seq.*

Somnambulism appears to be a morbid modification of ordinary dreaming. It is, in fact, a dream so modified, that the dreamer gains the power of pursuing, by voluntary motion, the objects which he is desirous of seeking or avoiding in his reverie. "When we consider the near relation of Somnambulism to the state of sleep, and to dreaming, it appears the more remarkable, that it should attack persons during their waking hours."

Several cases are on record, and some have occurred in my own practice, in which a person, in his waking hours, has been suddenly seized with a fit of insensibility to external impressions; during which, his condition, in every respect resembled that of the sleep-walker.

These fits suddenly terminate when the person is awakened, and generally recollects little or nothing of what has passed.—*Prichard on Diseases of the Nervous System, page 401, et. Seq.*

Somnambulism bears a closer analogy than a common dream to madness.—"Like madness, it is accompanied with muscular action, with coherent and incoherent conduct, and with that complete oblivion (in most cases) of both, which takes place in the worst grade of madness."

A young man named Johns, who works at Cardrew, near Redruth, being asleep in the sump-house of that mine, was observed by two boys to rise and walk to the door, against which he leaned; shortly after, quitting that position, he walked to the engine-shaft, and safely descended to the depth of twenty fathoms, where he was found by his comrades soon after, with his back resting on the ladder. They called to him, to apprise him of the perilous situation in which he was, but he did not hear them, and they were obliged to shake him roughly till he awoke, when he appeared totally at a loss to account for his being so situated.

In Lodge's "Historical Portraits," there is a likeness, by Sir Peter Lely, of Lord Culpepper's brother, so famous as a dreamer. In 1686, he was indicted at the Old Bailey, for shooting one of the Guards, and his horse to boot. He pleaded somnambulism, and was acquitted on producing nearly fifty witnesses, to prove the extraordinary things he did in his sleep.

A very curious circumstance is related of Dr. Franklin, in the memoirs of that eminent philosopher, published by his grandson. "I went out," said the Doctor, "to bathe in Martin's salt water hot bath, in Southampton, and, floating on my back, fell asleep, and slept nearly an hour, by my watch, without sinking or turning—a thing I never did before, and should hardly have thought possible."

A case still more extraordinary occurred some time ago in one of the towns on the coast of Ireland. About two o'clock in the morning, the watchmen on the Revenue quay, were much surprised at descrying a man disporting himself in the water, about a hundred yards from the shore. Intimation having been given to the Revenue boat's crew, they pushed off and succeeded in picking him up, but strange to say, he had no idea whatever of his perilous situation; and it was with the utmost difficulty they could persuade him he was not still in bed. But the most singular part of this novel adventure, and which was afterwards ascertained, was that the man had left his house at twelve o'clock that night, and walked through a difficult, and, to him, dangerous road, a distance of nearly two miles, and had actually swum one mile and a half when he was fortunately discovered and picked up.

Not very long ago a boy was seen fishing off Brest, up to the middle in water. On coming up to him, he was found to be fast asleep.

I know a gentleman who, in consequence of dreaming that the house was broken into by thieves, got out of bed, dropped from the window (fortunately a low one) into the street; and was a considerable distance on his way to warn the police, when he was discovered by one of them, who, awoke him, and conducted him home.

A case is related of an English clergyman who used to get up in the night, light his candle, write sermons, correct them with interlineations, and retire to bed again; being all the time asleep. The Archbishop of Bourdeaux mentions a similar case of a student, who got up to compose a sermon while asleep, wrote it correctly, read it over from one end to the other, or at least appeared to read it, made corrections on it, scratched out lines, and substituted others, put in its place a word which had been omitted, composed music, wrote it accurately down, and performed other things equally surprising. Dr. Gall takes notice of a miller who was in the habit of getting up every night and attending to his usual avocations at the

will, then returning to bed; on awaking in the morning, he recollected nothing of what passed during night. Dr. Blacklock, on one occasion, rose from bed, to which he had retired at an early hour, came into the room where his family were assembled, conversed with them, and afterwards entertained them with a pleasant song, without any of them suspecting he was asleep, and without his retaining after he awoke, the least recollection of what he had done. It is a singular, yet well authenticated fact, that in the disastrous retreat of Sir John Moore, many of the soldiers fell asleep, yet continued to march along with their comrades.

The stories related of sleep-walkers are, indeed, of so extraordinary a kind, that they would almost seem fictitious, were they not supported by the most incontrovertible evidence. To walk on the house-top, to scale precipices, and descend to the bottom of frightful ravines, are common exploits with the somnambulist; and he performs them with a facility far beyond the power of any man who is completely awake. A story is told of a boy, who dreamed that he got out of bed, and ascended to the summit of an enormous rock, where he found an eagle's nest, which he brought away with him, and placed beneath his bed. Now, the whole of these events actually took place; and what he conceived, on awaking, to be a mere vision, was proved to have had an actual existence, by the nest being found in the precise spot where he imagined he had put it, and by the evidence of spectators who beheld his perilous adventure. The precipice which he ascended, was of a nature that must have baffled the most expert mountaineer, and such as, at other times, he never could have scaled.

Dr. Gall relates that he saw at Berlin a young man, sixteen years of age, who had, from time to time, very extraordinary fits. He moved about unconsciously in bed, and had no perception of any thing that was done to him; at last he would jump out of bed, and walk with rapid steps about the room, his eyes being fixed and open. Several obstacles which were placed by Dr. Gall in his way, he either removed or cautiously avoided. He then threw himself suddenly again upon bed, moved about for some time, and finished by jumping up awake, not a little surprised at the number of curious people about him.

The facility with which somnambulists are awakened from the paroxysm, differs extremely in different cases. One man is aroused by being gently touched or called upon, by a flash of light, by stumbling in his peregrinations, or by setting his foot in water. Another remains so heavily asleep, that it is necessary to shout loudly, to shake him with violence, and make use of other excitations equally powerful.

The remote causes of sleep-walking are so obscure, that it is seldom we are able to ascertain them. General irritability of frame, a nervous temperament, and bad digestion, will dispose to the affection. Being a modification of dreaming, those who are much troubled with the latter will, consequently, be most prone to its attacks. The causes, however, are, in a great majority of cases, so completely unknown, that any attempt to investigate them would be fruitless; and we are compelled to refer the complaint to some idiosyncrasy of constitution beyond the reach of human knowledge.

Persons have been known, for instance, who delivered sermons and prayers during sleep; among others, Dr. Haycock, Professor of Medicine in Oxford. He would give out a text in his sleep, and deliver a good sermon upon it; nor could all the pinching and pulling of his friends prevent him. "One of the most remarkable cases of speaking during sleep," observes a writer in Frazer's Magazine, "is that of an American lady, now (we believe) alive, who preached during her sleep, performing regularly every part of the Presbyterian service, from the psalm to the blessing. We know individuals who have heard her preach during the night in the steam-boats: and it was customary, at tea parties in New York, (in the houses of medical practitioners,) to put the lady to bed in a room adjacent to the drawing-room, in order that the dilettanti might witness so extraordinary a phenomenon.

"A remarkable instance of this affection occurred to a lad named George David, sixteen years and a half old, in the service of Mr. Hewson, butcher, of Bridge-Road, Lambeth. At about twenty minutes after nine o'clock, the lad bent forward in his chair, and rested his forehead on his hands, and in ten minutes started up, went for his whip, put on his own spur, and went thence to the stable; not finding his own saddle in the proper place, he returned to the house and asked for it.—Being asked what he wanted with it, he replied, to go his rounds. He returned to the stable, got on the horse without the saddle, and was proceeding to leave the stable; it was with much difficulty and force that Mr. Hewson, junior, assisted by

the other lad, could remove him from the horse; his strength was great, and it was with difficulty he was brought in doors. Mr. Hawson, senior, coming home at this time, sent for Mr. Benjamin Ridge, an eminent practitioner, in Bridge-Road, who stood by him for a quarter of an hour, during which time the lad considered himself as stopped at the turnpike-gate, and took sixpence out of his pocket to be changed; and holding out his hand for the change, the sixpence was returned to him. He immediately observed, 'None of your nonsense—that is the sixpence again; give me my change;' when two pence halfpenny was given to him, he counted it over, and said, 'None of your gammon; that is not right; I want a penny more;' making the three pence halfpenny, which was his proper change. He then said, 'Give me my castor, (meaning his hat,) which slang term he had been in the habit of using, and then began to whip and spur to get his horse on. His pulse at this time was 136, full and hard; no change of countenance could be observed, nor any spasmodic affection of the muscles, the eyes remaining close the whole of the time. His coat was taken off his arm, shirt-sleeves tucked up, and Mr. Ridge bled him to 32 ounces; no alteration had taken place in him during the first part of the time the blood was flowing; at about 24 ounces, the pulse began to decrease; and when the full quantity named above had been taken, it was at 80—a slight perspiration on the forehead. During the time of bleeding, Mr. Hewson related a circumstance of a Mr. Harris, optician, in Holborn, whose son, some years since, walked out on the parapet of the house in his sleep. The boy joined the conversation, and observed, 'He lived at the corner of Brownlow-Street.' After the arm was tied up, he unlaced one boot, and said he would go to bed: in three minutes from this time, he awoke, got up, and asked what was the matter, (having then been one hour in the trance,) not having the slightest recollection of any thing that had passed, and wondered at his arm being tied up, and at the blood, &c. A strong aperient medicine was then administered: he went to bed, slept well, and the next day appeared perfectly well, excepting debility from the bleeding, and operation of the medicine, and has no recollection whatever of what had taken place. None of his family or himself were ever affected in this way before."—*Philosophy of Sleep, page 148, et Seq.*

Many more cases of temporary insanity, or somnambulism, might be adduced.—"The case of Mr. Little, of New-York, who rose in his sleep, gained the roof of his house, three stories high, and walked off the gable-end. The case of a young girl, 10 years of age, who was discovered early in the morning, walking on the top of one of the loftiest houses in the city of Dresden, apparently occupied in preparing some ornaments, as a Christmas present. She continued her terrific promenade for hours; sometimes sitting on the parapet, and dressing her hair, at others, gazing towards the moon, and singing, or talking to herself. Once, she approached the very verge of the parapet, leaned forward, looked upon the nets suspended from the balcony of the first floor, the thickly strown straw, in the street beneath, and the multitude expecting her fall; she rose up, however, and returned carelessly to the window, by which she had got out; when she saw there were lights in the room, she uttered a piercing shriek, which was re-echoed by thousands below, and fell dead into the street. The case of a Carthusian monk, who, while awake, was remarkable for his simplicity, probity and candor; but unfortunately, almost every night, walked in his sleep, and like the fabled Penelope, undid all the good actions for which he was celebrated by day: for upon such occasions, he was a thief, a robber, and a plunderer of the

dead. The astonishing case of Jane C. Rider, at Springfield, of which you have all heard, who, in her paroxysms, not only talked with more fluency and vivacity, than usual, but in several instances, got up and set the table with as much regularity as she did when awake, selecting the right articles, placing them upon the table, exactly as they should be, and moved about the house with as much ease and regularity as usual, although her eyes were often half shut. There were instances, too, as attested by many respectable witnesses, of her reading, with her eyes shut and bandaged! These paroxysms, not only came on in the night, but frequently during the day, and when *wide awake*, and though, at such times, she skillfully played at backgammon, attended to needlework, and at one time, took an emetic, (which, though it relieved her head ache, did not awaken her,) yet she recollected nothing afterwards of what transpired. The case of a student of medicine, who was accustomed to talk and answer questions in his sleep,—some of his friends, at one time, mentioned the name of his mistress, he at first talked incoherently, but soon his dreams related to the subject of his affections—thought he was under her window, and upbraided her for not appearing; at length, becoming impatient, he started up in his sleep, and threw whatever he could lay hold of against the opposite side of the wall of his chamber, evidently supposing it was the window of his mistress's room; when told the next day of what had happened, he said, he had only a faint recollection of having dreamed of his mistress. The case of a person, whose friends could make him dream what they pleased, and at one time carried him through the whole process of a duel; at last, putting a pistol into his hand, he actually fired it off, and was awakened by the report. The case of a pious clergyman, who would frequently rise in the night, steal and secrete every thing he could lay hold of, and in one instance, robbed his church. Of a student at College, who, at different times, secreted under the eaves of the college building, the money his father sent him, and supposed it to have been stolen, until he was discovered concealing it, where the rest was found. Of two individuals, who being caught out over night, in a place infested with robbers, one watched, while the other slept, but falling asleep, and dreaming of being pursued, shot his friend through the heart—But cases enough have been cited, to show you, that although the mind, at such times, possesses power over the limbs, it has no influence over its own thoughts. A thousand strange phantoms come and go, without the will, or any consciousness, and these take firm possession of the mind, leading the unfortunate victim of somnambulism,

or insanity to the commission of acts the most shocking, revolting and unaccountable to him in his waking moments.

You will perceive, Gentlemen, that there is an endless variety of wild and inconsistent conduct in insane and somnambulating individuals, and that these diseases are confined to no rules or limits, either in the duration or mode of attack. These may be inexplicable phenomena, and the case now under consideration may appear to you mysterious. Well, if any one should undertake to explain why any of the cases cited, so happen, it would be only undertaking to explain a very great obscurity, by being somewhat more obscure; it is sufficient for us to know they are facts, and corresponding with the one now on trial, and the government having, it is believed, completely failed to prove the felonious intent, every idea of malice being in fact negatived by *their own witnesses*—every act of the prisoner, before, at the time, and after the homicide, being contrary to any known conduct of a sane man, (either before or since the flood,) who had intended such a crime—all the probabilities, surely, are in favor of the prisoner's innocence, and the case falls short, far short, of being made out as the law requires, beyond a reasonable doubt.

But, Gentlemen, though we think that if we stopped here, you would say that it was more probable he was insane than sane, and therefore could not, with your oaths upon you, convict; yet we shall produce testimony in behalf of the prisoner, (for counsel, in a capital trial, ought not to omit anything they may deem material,) and it will be such as should remove every suspicion of guilt, every prejudice should be dissipated, every heart should acquit, and no man should hereafter regard the unfortunate youth before you, but with feelings of sympathy and compassion. We shall prove that the grand parents, sister and cousin of the prisoner were subject to sudden attacks of insanity, which lasted for a short time and went off, and that these diseases, as well as numerous others, are transmissible from one generation to another.

'It is of little real importance,' says Burrows, 'whether it be a predisposition, or the malady itself, which descends and becomes hereditary; but no fact is more incontrovertibly established than that insanity is susceptible of being propagated; or, in other words, that a specific morbid condition sometimes exists in the human constitution, which by intermarriage, or according to the vulgar but expressive language of the cattle breeders, by *breeding in and in*, may be perpetuated *ad infinitum*.'

'Hereditary predisposition, therefore, is a prominent cause of mental derangement.'

'Mania and melancholia do not propagate their respective types: a maniac may beget a melancholic, and *vice versa*.'

Esquirol assigns one hundred and fifty out of two hundred and sixty-four cases in his own practice, to *heredite*.

Dr. Burrows says he 'has clearly ascertained that an hereditary predisposition existed in six-sevenths of the whole of his patients.'

This predisposition often lies dormant in one generation and manifests itself in the next. We shall prove to you that there was a very early and large development of the brain, an unnatural growth of the prisoner's head, so much so, that at two years old, it was as large as at the present time; that it was then diseased, attended with much pain—that there were evident symptoms of insanity, and actual somnambulism then; and that the physician, who attended him, said "he would be likely hereafter to be insane."

Here, then, the jury will observe there are four distinct proofs, viz: the insanity of his grand parents, secondly of his collaterals, thirdly the singular formation of his head and in addition, actual early somnambulism; all and each of which show that there must be a peculiar organization of the prisoner's nerves, brain and blood vessels, on which a predisposition to insanity or somnambulism depends, rendering him more liable to these diseases than others, and consequently they would be excited in him by more feeble causes. Excited by more feeble causes did I say, they are each of themselves causes, and no additional bodily disease, no moral cause was necessary, to occasion a breaking out, a manifestation of that which from his birth was pent up within him. The wonder is, that the equilibrium was preserved so long, not that insanity did not manifest itself sooner, and it is to be accounted for on the ground, that very young and very old persons are not so liable to be attacked, as persons in middle life, and that he was placed in the most favorable circumstances to repress it; for it is already in evidence before you, that he had always lived in perfect harmony, confidence and esteem with every member of the family. It was his regular food, pursuits and employments, his freeness from all care and anxiety, his otherwise robust constitution and good health, the kind treatment he received and deserved; these were the circumstances, which protected that easily disordered string, the human mind, in all, but particularly in him, so long from being untuned.

He had arrived, at the time of the fatal occurrence, to that period of life, when the mind was becoming more energetic, when it possessed more sensibility, consequently was more easily acted upon by mental irritants, when the vivid affections were most operative, when whatever the imagination took hold of, it seized with force, and in a person like him, constantly

on the poise between sanity and insanity, would be likely to usurp dominion over the reason and judgment and throw him into that unfortunate state, which he inherited from his ancestors and to which he in some measure had been accustomed in his infancy. Do you inquire, Gentlemen, what was that mental irritant, that excitement of the imagination, which helped to throw him off his balance? Why, it was the Avery trial, which Cochran was reading at the time they left the house. A subject, which *so intensely*, at that period, engaged the thoughts of the whole community, but at that particular time of every member of this family, and concerning which, very probably, he and Mrs. Cochran conversed, as they passed along. It was the excitable and astounding thought to all, but particularly to him, that a minister of a holy religion should have been on trial for so monstrous a crime; that sacerdotal robes should appear to some, to be stained with a murderer's blood—it was, that one of that denomination with which he had probably worshipped, and whom he looked upon, from his sacred calling, as standing at the very gates of heaven, should be suspected of such hellish hypocrisy—it was this agitating thought, that helped unman his diseased intellect and led him without consciousness, whither it would,—and the effect was precisely such, as would be likely to result from such causes, and with such immediate previous mental associations. We all know, that the subject of our recent thoughts are often the subject of our dreams, and so it is in somnambulism and insanity; well, acts of violence, killing a female, having got firm possession of his diseased intellect, (by means of the Avery trial,) and in fact aiding or causing a manifestation of insanity, the act was such as medical men would have foretold, for similar cases are recorded.

“M. Barbier, a physician of Amiens, in a late sitting of the Academy of Medicine at Paris, related the case of a woman, 24 years of age, who, having lost a child 3 months old, became the mother of a second. Ever since the trial of Mad. Cornier, this woman has been tormented with the dreadful propensity to destroy this second infant. The propensity was at first feeble, but gradually augmented, and about 15 days previous to the date of report, the sight of a knife rendered this propensity so irresistible that the unhappy mother was forced to cry out for assistance, lest she should embue her hands in the blood of her child! M. Barbier had this woman admitted into the hospital at Amiens, in order to narrowly watch the case. In respect to her moral faculties, there was nothing extraordinary except this unhappy propensity. Her intellectual faculties were perfectly sane.

“The above case excited the narration of several others by the members present. M. Marc lately saw a female, 32 years of age, the mother of several children, who had an irresistible desire to destroy her offspring.

M. Bicheteau stated the case of a young woman, of amiable disposition, the mother of two children whom she had nursed, who, having gone to Vincennes for the purpose of spending a few weeks of the summer, was shown

the spot where Papavione executed her criminal act. The sight of this spot made such an impression on her imagination that she has, ever since, been harrassed with the horrible propensity to murder her mother and one of her children! Happily she disclosed the dreadful wish that lurked in her breast—she was removed from the place, and narrowly watched. By degrees the murderous desire subsided; but it was some time before she could bear the sight of her mother.

M. Esquirol stated that, since the trial of Madame Cornier, he has become acquainted with six instances of a parallel nature. Among these was a protestant minister, who became affected with the desire of destroying a favourite child. He struggled against this terrible inclination for 15 days, but was at last driven to the attempt on his child's life, in which he fortunately failed.

Vilermé related the case of a woman, who, immediately after hearing the account of an assassination, was tormented, for three nights, with the desire to destroy her daughter, a girl 7 years of age. She had even secreted a weapon for the execution of her horrible purpose!

“M. Costel observed that all these facts, singular as they might appear, were explicable by a change in the sensibility—in short, on the principle of *morbid sensibility*. In this condition, *example* has a most powerful influence. In illustration of this he mentioned the remarkable fact that, at the Hotel des Invalids, a soldier having hanged himself on a post, his example was followed, in a very short time, by twelve other invalids—and that by removing this fatal post, the suicidal epidemic was put an end to.

“M. Marc, in conclusion, descanted on the bad effects of giving publicity to the acts of suicide, infanticide, and homicide, now daily and hourly meeting the eyes of people in a nervous or melancholic condition, and leading to a multiplication of those acts themselves.

“We have no doubt that this is one cause of the more frequent occurrence of these catastrophes now than formerly.

Medical Chi. Rev. Vol. 10, page 226, et seq.

Do you inquire, why he did not instinctively shrink from injury to her whom he regarded as more than mother? Why, every one knows, and the cases read show, that insane persons are most liable to do acts of violence to those, for whom in their lucid intervals, they have the most esteem. In addition, we expect to prove there were adequate, operating, physical causes, which, in conjunction with these moral causes, occasioned the manifestation of his disease at the time. Farmers, too, it is said, are more liable to be deranged than any other class of people of the same grade of intellect, and this is owing to the greater solitude of their lives, especially in the winter season, and to their being more exposed from labor and accident to its corporeal causes.

One of these occurrences happened in the winter, the other immediately after great bodily effort. And happening at different times and without any known or suspected malice, at either, the probability of insanity is much strengthened. We have read to you that persons predisposed to insanity are more liable to have a paroxysm about the summer equinox, about the time this happened. But, Gentlemen, do you demand in addi-

tion to this train of circumstances, mutually supporting each other, and all leading to the same conclusion, same index, same decisive foreign proof: something standing aloof from every thing else, and stamping on the front of the whole transaction these letters, "he is insane." Why, as it often happens, that the most guarded and secret criminals are detected by the most trifling circumstance; so it seems almost providential in this instance that proof of an independent matter, should have been produced on the part of the government, making his innocence still more clear.

It has been proved to you that he was, at the time, violently siezed with the tooth ache, so much so, that he was obliged to sit down. We shall prove to you that this affection is neryous, and caused by the state of the stomach, and that so is somnambulism and insanity. This, then, is a most important and conclusive fact, taken in connection with his insensibility, his insanity; to show that an adequate physical cause existed at the time to produce insanity; unless you believe the prisoner to have feigned it, knowing its connection, which is the most unlikely of any thing that can be possibly imagined.

Thus, Gentlemen, shall we prove by books and medical men, every circumstance in the case, to bear the impress of somnambulism or insanity, and no more could be done in any instance.

Lastly, werefer you to the act itself, as evidence strong of its being the act of a maniac, towards one, for whom he never entertained any unkind sentiment, or unfriendly feeling. The verdict of innocence has been pronounced on the winter transaction by those best able to judge; who were thoroughly acquainted with his motives, his feelings and his character, and if he was innocent then, he must have been the June following.

Mr. PEASLEE then proceeded to call the witnesses on behalf of the prisoner.

Hezekiah Blake, Sworn.

I live in Kensington, about a mile and a half from the residence of old Abraham Prescott, grandfather of the prisoner.—He died 45 yars ago. I knew him well. He was crazy at times, and difficult in his family—acted strange, and would disregard his wife. It was a common remark that it was strange any man should spite his best friends as he did. I never saw him in this situation—he had several spells—but I do not know

how long they lasted. He was called a very clever man—a religious man. I knew Martin Prescott, a nephew of the old man—lived in the neighborhood. He was crazy a number of times to my knowledge. He never offered any abuse to any body, but would go about from house to house, neglecting his own business entirely. He was sometimes very lively, making all sorts of fun, and would sometimes use very bad and wicked language. I knew him about 30 years, during which time he had several of these spells of being out or crazy, as folks called it. I left Kensington before his death. I also know Moses Prescott, son of Marston. He is not in his right mind, but not so crazy as his father. He is under guardianship. I saw him a few days ago—he has been down three summers running to Kensington. He can work some, but still is not right.

Cross examined.—Don't know from my own knowledge that old Abraham Prescott was deranged—I never saw him deranged, and know it only by what other folks said. I knew Marston's situation—saw him often in his spells—he would travel this way and that continually—didn't talk like a rational man—would run on and talk all manner of fun, and bad words. He offered no abuse to any one.—If he hadn't been crazy, would not have run about so. He used to work for me—when first married he used to attend to business. Had these spells afterwards, once or twice a year—would last a month or so, when he would come out of them, and go to work. Was not in a situation to do business while in these spells—nobody traded with him—I should'nt have thought of trading with him. He generally wanted cider, and would get it as he walked about—the more he got, the more he crazy he grew. I do not think cider the whole cause of his spells—he was regular enough at times—but people said he was intemperate, and drink always made him worse.

Mrs. Mary Poor, sworn.

I was born in Kensington, and lived there until I was 27 years old. I was about 15 or 16, when old Abraham Prescott died. Saw him sometimes before his death, at his daughter's, opposite my father's. My aged friends then called him an insane person—he was sometimes very talkative and lively—at others more sad and mute. Heard folks say he dwelt very much on religious subjects. I knew Marston Prescott—he was called a deranged man—saw him several times at my father's, when he look'd as if he had been out all night—his clothes wet and dirty. He moved to Deerfield about a dozen years ago—was once or twice so afterwards. I have seen his son Moses lately—walking about from one place to another; he was not half so insane as his father.

Cross examined.—The last time I saw Abraham Prescott, I was about 15 years old. Can't say I ever saw him more talkative at one time than another. Have no recollection of any other evidence of his being crazy, than that folks said he was talkative and unsteady at times. Marston was a wanderer—was intemperate; and was in the habit of going from house to house and begging cider.

Dea. Abraham Prescott, Jr. Sworn.

A brother of mine, Benjamin Prescott was subject to a hypochondriac affection for a number of years, which entirely disqualified him for business. He would sometimes appear almost destitute of reason; refused to take food, for fear he should die in the act—labored under the belief that he did not breathe: would often run across the room to the looking glass, and sometimes keep his hand near his mouth nearly all day, to be sure that he actually breathed. He once secreted himself in the woods: and was afterwards confined. His delusion seemed to be confined to the idea of having lost his power of breathing. I suppose he was a cousin of the prisoner.

Mrs. Hannah Huntoon, sworn.

I worked with Mrs. Blake of Candia, aunt to the prisoner, 40 years ago. She appeared dull and melancholy: every thing went wrong with her: said she was of no use, couldn't plan her work, and wished she might die. She seemed discontented with every thing: folks said she was crazy. Her husband told me not to mind any thing about it, as she was occasionally a little out.

Cross examined.—Husband and wife lived well enough together, as far as I knew. She was not jealous of him at that time, nor before, I believe. After I left I heard she was jealous of him. She appeared so different while I was there from what she formerly was, that I thought she was crazy. Don't know that she was particularly passionate: heard folks say her craziness was caused by violent passions: cannot tell if that was the cause: don't remember that I ever told any body it was. I guess she was rather a high tempered woman: but heard no complaint from her of her husband while I was there.

Mrs. Mary Rowe, sworn.

I knew Mrs. Blake, sister of Chase Prescott, at Candia, and lived with her two thirds of the time for 12 years. She appeared very dull: did not enjoy her business, and said she could not have any thing done aright: it was of no use for her to work. When she was in these spells, we used to try to divert her mind by taking her into company. The spells lasted

sometimes 3 months. When well, she was cheerful and lively, and her conduct was altogether different.

Cross examined.—It is about 33 years since I lived with Mrs. Blake: no particular trouble between her and her husband while I lived there. Her husband sometimes censured her for finding so much fault with her help. She was not so pleasant a woman with her husband as some are: don't know why: perhaps she thought he went from home too much.

Her turns were not during a state of pregnancy. She used to accuse him of going after other women; but I don't think that was the cause of her being crazy.

I knew old Abraham Prescott of Kensington from the time I was 7 till I was 14 years old. He appeared very odd at times: was very talkative, and at times much excited: people called him crazy. I also knew Marston Prescott, and have seen him often when he appeared crazy. His son Moses I have seen when he talked and acted like a crazy man: I understand he is under guardianship. Mrs. Blake once told me she had thought of drowning herself, and had frequently been tempted to do so.

I was 12 years old when I first lived at Blake's. Mr. B. was my brother. Always knew old Abraham Prescott 'till his death, which happened when I was about 14. Reason of thinking him crazy, was his getting up of nights: folks said he got up: I did not know it: but I thought he looked and acted very odd.

Mrs. Mary Prescott, sworn.

I am the mother of the prisoner, and am now 74 years old. He is my youngest child. When an infant, 6 weeks old, he began to falter, and his head to increase in size: sores broke in his head: the doctors recommended showering. Dr. Graves called and said he did not know as any help could be given. He left some medicine and it did relieve him some.—The doctor said, from the appearance of the child's head, he should think he might be crazy in after life: he had known such instances. My son had a bad humour, which broke out in blisters on his feet and legs: we carried him to the sea, when about 2 years old: but the salt water did him no good. He used to have dreadful spells of crying, when I could scarcely hold him. These spells lasted sometimes half the night.—I was poor: and did the best I could to keep him dry and warm. When he grew older, he used to get up in his sleep, and many a time I have had to watch him for fear he would stray away. He always acted different from other children. I don't think he ever had his senses as other children: and oh,

I know if he had had his reason when———[Here the witness was so deeply affected, that she could scarcely proceed : though the prisoner seemed to sit as unconcerned as ever.]

Witness continued—Mrs. Blake once came to our house, deranged : she had a little girl with her : she staid all night, and was next day carried home to Candia. Don't know that she ever had any difficulty with her husband. Mrs. Hodgdon, a half sister of the prisoner, was always deranged when sick ; was once taken suddenly ill at our house ; physician was sent for ; she was out 2 or 3 days, and was carried home ; refused to ride with her husband in returning, or to nurse her child ; took several to hold her ; she used medicine at Raymond for the disorder in her head and grew better.

Cross examined.—About 30 years ago that Mrs. Blake came to our house out of her senses : she ran away : didn't appear to know any thing : didn't talk rationally. She did nothing particular deserving the want of reason while there, and don't remember she said any thing that made me think so. But she kept walking back and forth in the room, and appeared to have no sense. Woman of good sense when she was herself. Not very talkative : can't say what she said : did not know where she was going.

Chase Prescott, sworn.

I am the prisoner's father. I was about 22 when I left my father's—I worked out between 18 and 22—my father was occasionally deranged, as I call it—don't know what you call derangement here—he had several spells—and there are many alive of my age who know it. I once got him out to cut stalks to try to divert him—he did not cut well, but would as often cut them off in 'the' middle as any way, till he could get over his spells and become a little regular. I have often known my son, the prisoner, to get up in his sleep : my wife a great many times got out of bed to take care of him. His head was diseased, and he appeared crazy when quite small. He had terrible fits of screaming. At 3 years old, his head was nearly as large as mine : I know it, because we used to try on hats.—Dr. Graves said he would put something on his head to stop its growing until his body come up. We used to shower him with cold water 3 mornings and then miss three : and when we put the water on, he would look scared, and wild. We dipped him in the sea, but it didn't do good. Mrs. Hodgdon was my first wife's daughter, and half sister to prisoner. If any thing ailed her, she was always out of her head. At such times, she would strike her children. She was once at our house with her child : staid 2 or 3 days : would not ride home in the sleigh with her

husband or child, and I had to send down my daughter Betsey to carry the child. Mrs. Blake is my sister, and came to my house one summer deranged, as related by my wife. I used to know Marston Prescott—he was crazy a number of years. Was steady at first—a very clever man—had a woman bad enough for any body. Benjamin Prescott was crazy or hypochondriacal—distressed about his breathing—had to be shut up, and was a part of the time chained—fit for nothing for a number of years.

Cross examined.—My father was always deranged at intervals while I lived at home. I was about 28 when he died. He had these spells once in a year or two, and they would last some time—he could easily be put out—and kept travelling about the neighborhood.

Dr. William Graves, of Lowell, sworn.

The statement of Mrs. Prescott is, in part, confirmed by my books. By them it appears that I prescribed for her child several times about 18 years since. I have several charges for medicine and advise for a boy of Chase Prescott, but whether it was for the prisoner at the bar, or one of his brothers, I have no means of knowing. I have nothing except my entries to refer to for information, and these I have copied.

[Here Dr. Graves read, by permission of the Court, a copy of his original entries, which show the following charges against Chase Prescott, viz:

March 15, 1816, Medicine and advise for son.
 April 16, - - Visit and medicine by Dr. Merrill, a pupil, for child.
 August 29, - - Call at Wid. French's and advice for son.
 October 15, - - Medicine sent by Mr. Goodhue to child.
 October 19, - - Visit and medicine for child and grandchild.]

These are the only charges I have had against Mr. Prescott for medical attendance on his son or child. The other charges herewith exhibited, were for professional services rendered other members of his family. I have no recollection of any unusual enlargement of the child's head, neither have I any recollection of making such remarks respecting the disease of the child as has been stated by his parents. Neither can I persuade myself to believe that the disease was of that serious character which has been described. Knowing, as I do, my uniform method of close attention to important cases, it appears to me, that if I had considered the case so alarming and interesting as had been stated, that my visits would have been more numerous and not so far from each other.

Bartlett. Would not that depend, Doctor, a little upon the ability of the party to pay?

Sullivan. This I protest against as a reflection upon the humanity of the witness.

Witness. I never measured the extent of my professional services by the ability of my patients.

Cross examined. I resided in Deerfield, nearly nineteen years, in the neighborhood of Mrs. Blake—during which time I was her family physician. Eight years since, I moved to Lowell. Soon after the death of Mr. Blake, Mrs. B. took up her residence in the same village. I was there her physician until her death. I never saw her deranged, and never heard it intimated until to-day, upon this stand. I do not know Marston Prescott. Was well acquainted with Moses Prescott—he resided in my neighborhood at Deerfield—have known him 27 years. He was given to intoxication, and at such times, and no other, was extremely troublesome to his family and neighbors.

Bartlett. Was Moses Prescott intemperate before he became deranged?

Witness. He was. When I first became acquainted with him he was a correct and industrious man—a kind and affectionate husband and parent, but afterwards he became excessively fond of intoxicating liquors, which fondness increased with his years until it became necessary for the Judge of Probate to appoint him a guardian. He was intemperate before he was deranged, and his intemperance, in my opinion, was the cause of his derangement.

It being near sunset, the Court adjourned.

Wednesday, Sept. 10, 1834.

The Court opened at 9 o'clock.

Rufus Wyman, M. D. called and sworn.

I have been the Physician and Superintendent of the McLean Asylum for the Insane at Charlestown, for about 16 years, since 1813. I was present, and heard the cases of Insanity, and Somnambulism read by Mr. Peaslee, and consider them as received medical facts, well authenticated. Dr. Abercrombie, one of the authors quoted, is an author of high standing; and cases analagous to those quoted are stated by other writers of authority. That insanity is a hereditary disease, i. e. a predisposition to it may be transmitted from one generation to another—is now a medical fact every where admitted. During my superintendance of the asylum, 1015 patients were admit-

ted, whose cases have come under my examination; and of those—122 had insane ancestors in a direct line, and 59 had insane collaterals, where no insane ancestors were known. This number is much less than has been reported in other countries. In England, for instance, the proportion is nearly 50 per cent. of insane ancestors and collaterals of the patients, in three lunatic asylums. Insanity in ancestors or collaterals, is no evidence of its existence in a succeeding generation. It produces a predisposition in the family, or race. Hereditary insanity frequently exhibits itself, without any known, or apparent cause; as do certain other hereditary diseases, such as scrofula, epilepsy, consumption, gout, &c. It may, and does frequently exhibit itself suddenly, and go off as suddenly; or exists for an indefinite period, according to the constitution and temperament of the individual. In this respect, it may be similar to other hereditary disorders. There is no known period of its continuance, and two cases are seldom found alike. The disease is sometimes manifested by a sudden disposition to violence, and sometimes to great violence; but I do not remember that I have seen any case where the first symptom was a disposition to kill. I have known the first symptoms of a paroxysm to be indicated by sudden acts of violence, such as kicking, biting and striking. Cases of this kind have occurred in the asylum. A patient in the asylum, of a kind disposition, is subject to alternations of depression and excitement, with an intermediate state of apparently sound mind. The changes from these states, is usually gradual; but I have known him to change very suddenly. When depressed, he is silent, inactive, careless of dress, &c. One morning he partly dressed in the clothes he had worn for several weeks in a state of tranquility—he instantly cast off the clothes put on, called for his best suit, was gay, talkative and passionate, and would strike, kick, and bite, without provocation.

This is the most remarkable instance of a sudden return of a paroxysm which has come to my knowledge. I have known some cases where the attack came on suddenly; but so far as my observation extends, I have found the disease usually to make its approaches gradually—sometimes, for years, in so imperceptible a manner as to escape the notice of friends. In such cases the subject becomes in fact deranged, before his family discover any symptoms of the disease.

It is an undoubted fact, that a man may be insane on a particular subject, and appear perfectly rational on all others. This is termed monomania—and a vast number of cases of this and other forms of insanity might be related if desired. I am not aware that in monomania, there is usually any diffi-

culty in discovering the early symptoms—unless the patient be affected in a way to induce a concealment of his peculiar malady. Persons thus affected are not conscious of their delusion—their belief of imagined facts is as strong to them as that of real facts is to the perfectly sane.

If an insane person believes an act to be right, which he knows others think to be wrong, he may act from *his* own belief and yet attempt to conceal the act, that he may avoid the punishment which others would seek to impose on account of their belief that the act was wrong.

The insane generally are impelled to the commission of strange, enormous, and unaccountable acts, by what they think a duty—and not unfrequently boast of such acts.

Somnambulism, or sleep walking, is a different affection from that of insanity—though in some respects allied. Have known only two or three cases of somnambulism. One was that of a young lady, brought to the Asylum in 1831, at the age of 22 years. When 13 or 14 years old, she was subject to fits of somnambulism. She would often rise from her bed in this state, and frequently, while in company or a party, without previous sleep, would rise from her chair—her eyes wide open and staring, walk the room, dust the furniture, brush down cobwebs, call by the right names the persons whom she met, play checkers or draughts. Once having beat her uncle, she exulted in the victory. While thus affected, throwing cold water upon her or shaking her never awoke her. She was put in bed and held down—attempted to get up three or four times—then lie still and in half an hour appear like a person waking from sound sleep, and afterward have no knowledge of what had occurred. She was thus affected, from once to four times in 24 hours, for 5 or 6 weeks, and recovered. She afterwards became deranged and so remained until she died.

A paroxysm of Insanity may be induced by excessive mental or bodily exertion—by any labor, or posture of the body, which would cause a great flow of blood to the brain. Severe muscular exertion in this way might bring on the attack in persons predisposed to disease.

Pain in a carious or sound tooth may be produced by indigested food in the stomach, by worms and other causes of irritation in the bowels, and in females by a state of pregnancy or nursing. Insanity is often caused by similar irritations. Somnambulism and dreaming are also produced by similar states of the stomach and intestines.

I recollect but one case, where a somnambulist was disposed to violence—that is a case related in a note to Watkin's edition of Bichat on Life and Death.

“A respectable farmer, advanced in life who has been a somnambulist from his infancy, who in his nocturnal rambles has committed many an innocent robbery on his mother’s larder,—not many years ago arose in the night, dressed himself completely and to the inexpressible terror of his lady, seized the bed with her in it, carried it into an adjoining room and placed it on the hearth. After this wonderful exercise of muscular strength, he walked out to a house at some distance occupied by one of the servants, roused him up and in so distinct and particular a manner ordered him to set off immediately in the wagon with certain produce of the farm to a neighboring town, and there wait his arrival, that the servant did not hesitate to obey. The gentleman then returned to his affrighted lady, quietly undressed himself and passed the remainder of the night in bed. Upon waking next morning and discovering to his unfeigned astonishment that his eyes were directed up the chimney, he demanded of his wife how and why the bed had been placed in such a situation. The irritability of his temper is so great on these occasions, that any attempt to impede or contradict his inclinations would be attended with most dangerous consequences.”

I am acquainted with the hospital at Worcester—but do not know the proportion there of insane ancestors or collaterals. Aaron Locke was tried in Middlesex, for the murder of his wife. I was not present at the trial, but communicated with the counsel before trial.

Dr. W. then spoke of the several authors whose works had been quoted by the prisoner’s counsel.

Cross examined.

Sullivan.—I understand doctor, that insanity is in some cases hereditary. Now if an insane man has a grand-child who commits a homicide, would you infer from the fact of his ancestor’s infirmity that the murderer was himself insane?

Witness.—The act might be connected with circumstances going to shew the existance of insanity.

Sullivan. If no act of violence precede or follow the fatal deed, and no apparent motive can be found for the murder, should you believe a homicide to be insane, merely because he has insane ancestors?

Bartlett, in behalf of the prisoner, here objected to the question as improper. To suppose a case, and to ask the opinions of medical men on such a case, was, he contended, stepping out of the province of the jury.

The *Attorney General* replied, that he could perceive no ground of objection.—The prisoner was setting up the plea of insanity,

on the ground that some remote ancestor of his was crazy.—The court would perceive that the question was only to get the opinion of the witness on a case precisely such as may be proved to exist in this instance. If improper, however, he would not press it.

The COURT observed, that the question being founded on a supposed case, could not properly be put—as it could elicit nothing more than an opinion, which would not be evidence for the jury.

The witness then proceeded.—Insanity may come on suddenly, when hereditary, or not hereditary. It assumes all varieties of appearance. I never knew a case of insanity to come on suddenly, and last for a less time than two weeks—it frequently goes off as suddenly as it comes on. New exhibitions of the disease are constantly arising, and new cases are perpetually occurring. There is no regularity in the duration of the disease. It extends from 2 or 3 weeks to 8 or 10 or more years—sometimes intermittant, and sometimes continued with no intervals of sanity. The approach of insanity is usually gradual. In its incipient stages the friends of the patient often perceive no indications of the disease, though frequently after its full manifestation, they can look back and recollect circumstances which prove a disordered state of mind. A disposition to violence is generally discoverable before acts of violence are committed. The proportion of cases of sudden impulse to violence is small compared with those where the manifestation is gradual.

There is some analogy between dreaming, sleep-walking and insanity. The exciting causes of each may in some respects be similar. The patient who recovers from insanity speaks as having been awaked from a dream. Should not say that sleep-walking was evidence of insanity. *Monomaniacs are generally

*Dr. W. after the trial, gave the following explanation. In sound, healthy, perfect sleep, the organs of sensation, as seeing, hearing, smelling, &c.—also the voluntary muscles which move the body and the organs of speech; also the faculties of the mind, are all in a state of rest, which usual causes do not disturb, i. e., they are asleep.

In *dreaming*, the organs of sensation, and the voluntary muscles are asleep—the memory is awake—the imagination is also awake, and arranges ideas into various and fantastical groups; but the judgment is asleep, and does not correct the imagination, and hence the dreamer believes the arrangement of ideas thus made to be correct, and they are taken for realities.

In *somnambulism*, several of the organs of sensation, the voluntary muscles, including that of speech, the memory, imagination and judgment are partly awake, but not so in equal degrees.

In *insanity*, the organs of sensation, the voluntary muscles, the memory and the imagination, are all awake; but the judgment is awake only in part; and false belief, delusion, with the ability to act agreeably to such belief, is the result.

perfectly rational on every subject, but the particular delusion under which they labour. [Dr. Wyman here related the case of a gentleman in the asylum who imagined some person was perpetually throwing chlorine gas upon him, &c.—also of a lady who supposed that she was dead, and insisted on being buried, &c.]

Severity to brutes has in some cases preceded insanity—as in the case of a gentleman in the asylum. He was a farmer of very industrious habits, and temperate—became passionate and violent, chained his horse to a tree and whipped him unmercifully, and whipped his oxen—soon afterwards was manifestly deranged—grew jealous of his wife—got a gun to shoot her; but was secured, and was brought to the asylum. He was afterwards discharged, not as a person recovered, but for trial of his powers of self-control. He is now in the Worcester hospital as a dangerous lunatic.

George Parkman, M. D. of Boston, Mass. sworn.

Until the establishment of the Public Asylum for Insane persons, near to Boston, I there had a house of that description. I have ever since continued to attend to insanity and to subjects which are allied to it, and to record observations relative to it. In regard to a question of the Attorney General, viz: "If the grand-child of an insane person commits a homicide, no violence on the part of the grandchild having preceded or followed the homicide, and no motive appearing for it, would the fact of the grand-father's infirmity lead to the inference that the grand-child was then insane?"—the fact would suggest that strict review and inquiry should be made into the course of life of the grand-child, in search of an explanation of the homicide, by comparison of it with his other acts. Insanity is accounted, by persons who are conversant with it, to belong to the set of diseases which are generally considered to be hereditary. Some people seem to be born with a predisposition to some one of these diseases. They may escape it, if they escape exposure to the causes which seem to excite the actions in which it consists. This may explain its non-appearance in certain individuals, in one sex, and in a generation of a family: and the recurrence of such causes may occasion the diseased condition to be recognized in a succeeding generation. Resemblances in form and features are sometimes more readily traced between grand relations than between parents and children: this was noticed in the family of the late Pres. Jeffer-

son. I know a young girl who strongly resembles her great aunt and her second cousin (the aunt's son,) between whom and the girl's parents there is very little resemblance. *Insan-

*Hereditary diseases are those whose subjects seem to have a certain particular organization which seems to dispose them to be attacked by the diseases and to transmit such disposition to the descendants of these subjects. A child of a parent who has died consumptive at the age of 30, will be likely to experience, at the approach of that age, the appearances of that disease, in the same manner as the parent. A concurrence of particular circumstances may accelerate or retard it. Hereditarily consumptive people, generally, like their parents, have a contracted chest, shoulders elevated like wings, slender limbs, &c.

The children of people who have been insane are more liable to alienation of mind than are the descendants of other people. When a numerous family has sprung from parents who are tainted, it rarely happens that insanity is not produced in some of the family in part of their lives, by any exciting causes. The same thing is observed among their children. Causes, which are not followed by any mental disorder in others, often seem quite sufficient to bring it on in those. Children often inherit the cast of features, tone of voice, temperament, and mental character of their parents. Probably the internal organs, as the stomach, intestines, kidneys, bladder, liver, brain, and the minute parts partake of the same inheritance, and that a child often resembles its father and mother or has a joint resemblance to both, as much in the secret organization of the frame as externally. Such a conformation entitles a child, in proportion to its resemblance to its parents, to diseases or unhealthy actions similar to those to which its parents were subject, provided it be exposed to the common exciting causes of such complaints. Children of rickety, scrophulous, epileptic, consumptive, asthmatic, insane, cancerous, gouty, apoplectic, deaf, dumb, blind, people, are more likely to become such than are the children of healthy parents; and often at the same age and under the same circumstances in which the parents became so. That people were disposed to certain diseases from birth was noticed by the Greek physicians.

If a family or hereditary susceptibility is such that a disease, not existing at birth, is afterwards induced without any external causes, or by causes which cannot be distinguished from the functions of the system; such a state may be called a *disposition* to the disease; and there can be but little ground for hope of preventing it. If the susceptibility, though greater than is remarked in other families, is so far less than a disposition, as always to require an external cause to produce the disease, this state may be called a *predisposition* to the disease. In some families, a number of brothers and sisters fall into consumption as they succeed to a certain age. This we may strictly call a *family-disposition*; we discover no external cause to excite it. In some persons the susceptibility to gout is so strong as to require no stimuli for inducing it, other than such as seem absolutely necessary for the support of ordinary health.

A man, at 40, has a perfectly healthy wife; his son, arrived at the age at which his father's infirmities began, becomes gouty and almost helpless, without having done any thing extraordinary which entitled him to this painful condition. The parent does not transmit to the child, properly speaking, a disease, to which, as in the above instance, the parent was a stranger till long after the child's birth; but rather an organic disposition, internal resemblance to the parent, as well as external, more or less of all the organs; which disposition and resemblance tend in the child to that disease. The perfection and imperfection of the parental organs are ordinarily perpetuated in their children. Gout is generally transmitted, as is an irritable, delicate, florid complexion. A certain organic evolution seems to be necessary or requisite to ripen and complete these morbid dispositions.

ity presents great varieties of form and of duration. Sometimes the beginning of a paroxysm is marked by an act of violence, especially if, as in sleep walking, the sufferer is un-

The members of the family of Turgot, minister of the Treasury, under Louis XVI. died between the ages of 40 and 50, under a very violent gouty affection. Other families present an hereditary longevity. There are in the races or families of men, as in those of horses and dogs, characters of genealogy written in their looks and manners, and not all of them described by the names of complexions and sizes. Temperaments, features, humours are transmitted; ferocity by tigers and leopards, mildness by sheep and doves. The crossing of races extinguishes or diminishes hereditary dispositions to disease; and nature by degrees recovers her form and vigour, especially if the regimen, habits and education are adapted to overcome these dispositions. The influence of either parent also causes deviations and varieties. Between children of the same family there are differences in complexion, height and fulness. But, most children who are brought up with their parents, easily contract their habits. Often the drunkard's or libertine's child should accuse the parent less for transmitting gout and enervation than for setting examples of the vices from which these effects result.

Dr. Hallaran, physician of the Asylum for Insane persons near to Cork, in Ireland, says—the many undeniable proofs of hereditary disposition to insanity, tend to prove its ultimate connexion with a peculiar and original conformation of parts. Its independence of every subtle causality on the action of the mind, previously to the apparent possibility of morbid impression being made upon it, seems perfectly admissible. Two youths and their sister, all acutely insane, the children of an idiot mother, have been under my care at different periods. I have, Oct. 1818, father and son, mother and daughter, brother and sister, all similarly affected with chronic insanity. Several examples of those have appeared at the public asylum. Of 164 cases in the Mass. asylum at Worcester, 42 are called hereditary, and 35 periodic.

It is unjust to accuse exciting causes only, violent passions, unforeseen events as productive of suicide. There are predispositions, physical states which modify, exalt or weaken the sensibility. Differences in the modes of thinking cause one person to laugh at the most afflictive events, whilst another is put into irritation or despair by them; one kills himself, another becomes insane. Is not this predisposition rendered evident by an heritage of suicide! Whole families have committed suicide, whole families have become insane. Voltaire, in his Philosophical Questions states that a man, of a serious profession, of a mature age, of regular conduct, killed himself Oct. 17th 1769, and left to the Council of the city in which he was, a written apology for his death; his father and brother had killed themselves at the same age as he. A gentleman, whose father and grand-father had killed themselves at the age of 53, began from the age of 50 to have temptations to suicide; he was persuaded that he would end as did his father.

A woman (at the Salpetriere, the hospital for insane women in Paris, 1821) has had a great number of attacks of melancholy with a propensity to suicide; her daughter has had many attacks of mania; her grand-daughter subject to the like, from the age of 15, has had ideas of suicide. There are here many insane women whose parents, sisters or brothers, have committed suicide. A rich merchant of a very violent character, was father of six children. As they finished their education, he gave them a large sum of money and sent them from home. The youngest, at 26 or 27, became melancholic and precipitated himself from the top of the roof of the house; a second brother who had taken the charge of him, reproached himself with his death, made many attempts to commit suicide, and died a year after under the consequences of prolonged and repeated abstinence. Two or three years after-

skilfully thwarted in his vagaries†. Insanity like some other diseases, is sometimes regularly intermittent; the sufferer is quite reasonable, and the contrary on alternate days. Many facts seem to point to the conclusion that the knowledge of deeds of enormity leads to a repetition of them: in certain vacant, ill-regulated minds, they seem to induce a sort of state of temptation, or headlong, almost irresistible propensity or impulse to like deeds and excesses. In the news-papers and public journals in which suicides are related, a solitary case is seldom found; not unfrequently many cases occur in one neigh-

wards a sister became maniacal and made a thousand attempts to destroy herself. The sixth is at the head of a great commercial house; he would have ended his life like his brothers, were he not bound to it by his children and his wife who is by her care and tenderness his guardian angel.—*See Dict. des Scien. Med. art's. Germe, Hereditaire, Suicide.—Adams on Hered. Dis. p. 13, 15, 21.—Crichton, p. 184.*

Dr. Gall relates in his *Physiology* 3rd Vol. that Mr. G. a land-holder, left seven sons with a fortune of two millions of francs. They remained in or near to Paris, preserved their patrimony; all of them had good health and general consideration and led honorable lives. All of them in the space of 30 or 40 years committed suicide. Dr. Gall knew a family in which the grand-mother the sister, and the mother committed suicide; the daughter was on the point of precipitating herself from a height, and the son hung himself; and see Rush on *Dis. of the mind*, p. 488.

† Translation of Dr. Esquirol's introductory paragraph to his article *Mania*, in his *Dict. des Scien. Med.* (This article, with his others, on kindred subjects in that work, is strictly descriptive and constitutes a body of practical information on those subjects, such as is, at least, not surpassed in any other treatises.) 'What change is effected in this man who yesterday, this morning, just now was capable of the profoundest calculations! In an instant forgetting every thing around him, not knowing even himself, he lives no longer but in chaos. His disordered and menacing discourse betrays the disturbance of his reason; his actions are mischievous; he wishes to overturn every thing; to destroy every thing, he is at war with everybody, he hates every thing which he used to love. It is the genius of evil which delights itself in the midst of the confusion, disorder and dismay which he spreads around him. This woman, the image of candour and of virtue, mild and modest, whose mouth opened but to say obliging and generous things, who was a good daughter, a good wife and mother, suddenly loses her reason. Her timidity is changed to boldness, her mildness into ferocity; she utters only injurious expressions, obscenities, and blasphemies; she respects neither the laws of decency nor of humanity; her nakedness defies all observation; in her blind delirium she menaces her father, strikes her husband, cuts the throats of her children, unless her recovery or death puts an end to her excesses. To a condition so deplorable succeeds an afflictive calm; the maniac falls into an apathy and carelessness; there is no more contention of spirit, no more threat; the remembrances are lost; all things run together and disappear in confusion.

As to the question, "what is the shortest duration of a fit of insanity?" reference may be had to the case of Howard Trask. It did not appear that his paroxysms, whatever they were, exceeded the time expended in committing the act for which he was tried, and which he has twice repeated, besides his other atrocities. The verdict "Insanity," seemed founded on small evidence.

borhood within a very few days.* In the public accounts and histories of insane people, more of them are stated to be between the ages of 20 and 30, than between any other two proximate ages. The first appearances of insanity are generally attended with a disordered condition of the digestive organs. In disturbed states of the constitution, severe pains about the teeth are sometimes experienced, without any apparent local cause.

Dr. Wyman again called. I knew a young gentleman who recently came to Boston on a visit to or with his sister, and was suddenly seized with a paroxysm of derangement, rushed into the street and entered a shop, and attempted to stab the female who kept it. He was seized and brought to the asylum, where he remained a week, when his father came for him and found him perfectly recovered. He has had no return of the malady.— There is generally a reluctance on the part of the friends of the insane, to admit that the disease is hereditary in the family, and the fact is frequently communicated in the strictest confidence to physicians, with a request that it may not be made known.

Doct. T. Chadbourne, sworn.—The books from which quotations were read yesterday by the Prisoner's counsel are, (with the exception of two recent works with which I am unacquainted) standard authors, recommended by the Medical Society of this State, as text books for students. They are considered the best printed authority on the subjects on which they treat. I concur in the doctrines and opinions relative to Insanity advanced by the physicians who have preceded me. That there is a constitutional predisposition in certain families to mental derangement, occasioning an hereditary tendency to disorders of the mind in particular individuals, and that cases of very sudden accession of insanity sometimes occur without any known premonitory symptoms, and as suddenly leave the patient, are well authenticated facts, and are so recieved by the most intelligent physicians of this state, so far as my intercourse with them extends. There is a great analogy between dreaming and somnambulism, but both differ essentially from Insanity. I have known no instance of sleep walking in which a disposi-

* In a London Journal of July 1812, seven suicides are announced as having occurred within five days. A celebrated banker, Mr. Goldsmith, of London, shot himself Sept. 1810; his brother had formerly committed suicide.—Lately a man in Boston hung himself—his father had done the same.—Also a man here; cut his throat; a young man living in the same family, a few months afterwards did the same, as did another a few days later, after the example of his father.

tion to injure others was particularly manifested. A remarkable case of somnambulism occurred in Maine, a few years since, in which the patient apparently attempted to injure himself. I was acquainted with some of the circumstances of this case.—The patient was a brother of the late Dr. Chandler of this town. The attacks were so frequent, occurring almost every night, that he required watchers, the same as a person in the delirium of a fever. He always attempted to escape from his keepers—sometimes effected it. Soon after escaping one night, an outcry was heard from the pasture, and he was found suspended by a rope from the limb of a high tree, at so great distance from the ground, that ladders were procured to reach him; he did not die; he luckily attached the rope to his feet instead of his neck, and received but little injury. A case of dyspepsia is related in Johnson's *Medico-Chirurgical Review* (July No. for 1831) in which the patient always manifested a propensity to commit suicide whenever there was indigestible food in his stomach.

Cross examined. I don't know that cruelty to animals has been often noticed as a precursory symptom of insanity; don't know how long the habit of sleep-walking continued in the case alluded to—certainly for several weeks—know nothing of the history of the case after his attempt to hang himself.

Dr. Nehemiah Cutter, of Pepperell Mass. Sworn.

I have kept a private asylum for lunatics for the last fifteen years, and have had more or less for 16 years in my family.—The cases read yesterday, are received medical facts, as far as I am acquainted. Abercrombie is an author of sound reputation. Insanity often lies dormant in one generation and manifests itself in the next. Hereditary insanity may manifest itself without any known cause. It is often sudden and intermittent. Persons predisposed, are most likely to suffer the attacks between the ages of 20 and 25. In most cases the symptoms are not discovered so soon as they in fact appear—friends and acquaintances do not at first notice occasional periods of exhilaration or depression which affect the patient—but after the case becomes confirmed, they can look back and circumstances instantly come to their recollection, shewing the early period of the attack. Delirium may come on suddenly, and go off as suddenly. It is sometimes accompanied by an irresistible disposition to do violence, and kill.

A man 21 years of age has been afflicted with epileptic fits about seven or eight years. About 18 months since was attacked with delirium, in which he was violent, and struck his father

and mother and every body that approached him. He was confined and the delirium continued about two weeks. After he recovered from it, his father placed him under my care. He has had several paroxysms. They come on suddenly, and one of the first symptoms is a disposition to fight or strike. He is cunning and lays his plans to attack whoever comes in his way. He feels or thinks that every body is at war with him, and he with them—he would slay if he could any person, and I have not a doubt but he would kill a child without hesitation.

These paroxysms of delirium vary in their duration. This man has been my patient about 15 months, and has had five paroxysms of delirium. The duration of each has differed—the first continued about two weeks, and the last only twenty-four hours. He recovers from them suddenly, and has no recollection of any thing that transpired during the time.

In 1832, had a patient, a married woman, about fifty years old, who had sudden paroxysms of insanity, during which her reason was suspended, and her conversation was irrational, incoherent, and profane. These would sometimes continue 15, 20, 30 or 60 minutes. Then she would be perfectly rational, and would wonder that she had such feelings—and said she had a whirling sensation in her head, which seemed to carry her up into the air, and every thing around her was in a whirl and confusion. She recovered and returned to her family, and continued well six or eight months: then became rather melancholy, and last spring attempted to commit suicide by cutting her throat. After she had made the attempt, she recovered her reason and wished her friends to do all that they could to save her life, and said she was not conscious at the time what she was doing. She recovered, and in five months afterwards, made a second attempt, but did not succeed; and manifested the same desire to preserve her life, and was equally unconscious of the act.

Cases of Monomania.—A young man about thirty years old, who imagined he had made a league with God, and that he had given him power over the elements, and he could control them at his option. He could produce tempests, with thunder and lightning, heat and cold, at pleasure, and frequently said if we did not please him, he would “cause the earth to open and swallow us up, or the lightning to strike us dead in a moment,”—and he frequently said it would not be wrong for him to kill a man, if he were in his way, or opposed him. He often declared that we had better be careful how we treated him, for his heavenly Father had given him the disposal of all human

life, and we held our life in him on sufferance. He was perfectly rational on any other subject disconnected with this.

A married woman about forty years of age, when under my care, and is now about fifty—she imagines she was changed or spiritualized—refused to be considered a wife, and resumed her maiden name, and would not answer to any other name. She said she had constant intercourse with her heavenly Father—her body was incorruptible, and she never should die—always should exist in her present body. In all other respects, and on other subjects she conducted rationally. She remains in the same state of mind.

A young, unmarried lady, about twenty years of age, imagined she had no soul—she said it was in hell—the devil had taken it, and her body moved about without it. She was perfectly rational in her conversation on every other subject, her judgment was correct, and was capable to perform business as usual. She recovered.

A young man about twenty-five years old, a clergyman by profession. He imagined he had committed the unpardonable sin, and said there was no hope in his case. His mind was rational on any other subject; his opinion and judgment on theological points were correct, and he would carry on an argument with as much power and correctness as formerly. He recovered.

A young lady about twenty-six years old imagined her stomach was gone, and there was a vacuity in that part of her abdomen. She imputed the removal of her stomach to the vengeance of God on account of her sins. She said she constantly felt the burnings of hell. She was in all other respects perfectly rational. She also recovered.

Monomaniacs themselves are often desirous to conceal their particular malady, and their friends are generally disposed to do so. Their situation can hardly ever be drawn out of their connections, except by close questioning. In cases of this description, I usually make the most thorough enquiries. I have more patients in the months of June and July than in any other months—but cannot say that these attacks are peculiar to any season of the year.

Bartlett. Have you observed the manner and appearance of the prisoner at the bar?

Sullivan. I object, may it please the Court, to the enquiry, as improper to be made.

Court. As a question of skill, it is admissible—the jury will weigh its propriety.

Witness. I noticed the appearance of the prisoner at the bar yesterday; the motion of his eye is idiotic, dull, lazy, indifferent; no appearance of fear or anxiety in his countenance—no signs of any attempt at feigning—could not deceive one practised in examining idiots. In general, cases of this kind of insanity settle down into confirmed idiocy. I noticed no agitation or anxiety in the prisoner during the examination of the two first witnesses on the part of the government. Paid particular attention when Cochran testified.

Cross examined. Dulness of the eye no certain mark, for instances are known of persons of dull and inanimate countenances possessing minds of high order. But in the appearance of the prisoner's eyes, I should think there was evidence of idiocy rather than insanity. In insane persons, the motion of the eye is quick and brilliant—in that of the idiot, dull, motionless and heavy.

Dr. William Perry, sworn.

I have given the subject of Insanity considerable attention for several years, and have been frequently required to testify in cases, where persons were supposed to be affected. The books read yesterday are standard medical works, and the cases quoted are well authenticated. Insanity is a hereditary disease, in some cases, and like other hereditary diseases, depends on constitutional formation, whatever that may be. It is a received opinion that insanity originates in a disturbed state of the nervous system. The centre of that system is in the brain. Persons having large heads, no certain evidence of predisposition to insanity, though it may indicate some bodily disease. It is sometimes attended with early mental developements, as in the rickets, where the faculties of the mind seem to be sooner called into action. Early developement of the brain, attended with unusual developement of intellect, sometimes thought to be dangerous. Insanity, somnolency and dreaming are allied in one sense of the word. Insanity comes on and goes off suddenly—it is manifested by both good and bad acts; depends on constitution, no limits to it. I have read numerous cases where the first symptoms of it were inclinations to kill. There is difference between Monomania and insanity. It is a fact, one may be insane on one, two or more subjects, and lucid as to all others.

Cross examined.—A disposition to kill, or to do unlawful acts, is almost universally followed by other similar acts—but might be prevented by extraordinary circumstances. A predisposition to commit murder, or suicide, might be cured by the pa-

tient suddenly coming to a consciousness of his infirmity, when the shock is so great as to prevent a repetition. Where the excitement is strong, the disposition to do violence is generally spoken of—the insane person is not apt to conceal his purposes. I never knew a case of insanity of shorter duration than four or five days.

Abigail Calf, sworn.

I saw Mrs. Cochran a few weeks before her death, and conversed with her about the January transaction. She remarked that her escape was truly wonderful—it was a great mercy that they were not both killed. I told her I would not keep such a boy. She said Prescott was a good boy—she had no doubt he was asleep, and did not intentionally hurt them.

The *Attorney General* objected to this kind of conversation being put in as evidence.

The *Court* remarked that its bearing could not be distinctly seen, but there was no tangible reason for ruling it out. In cases of this kind, if there be any doubt, the testimony should be received, and the jury could give it its true value.

Attorney General. The conversation merely shews Mrs. Cochran's *belief*—no *fact*, such as would be evidence for a jury. We might as well offer testimony of a *belief* that he was not asleep, but in the full exercise of his faculties.

COURT. Yes—if you put in the winter transaction as evidence of malice.

The prisoner's counsel here rested the defence for the present.

The *Attorney General* then proceeded to call further witnesses on behalf of the State.

Norris Cochran, sworn.

I had a conversation with the prisoner in relation to his killing Mrs. Cochran, in September last at the State Prison. I asked him how he could do such a deed, without provocation, as he had nothing against her. He said he was put out for what she said to him. He thought from what she said, that he should have to go to prison, and therefore killed her. I asked him if he didn't know that his fate must be far worse than going to prison, if he killed her? He said he did not stop to think of the consequences.

Cross examined.—William Knox was present, when I saw Prescott at the prison—Chauncey Cochran went in and a number of others. Prisoner did not say *what* Mrs. Cochran said, but he was offended at what she did say. I was there but a short time. Mr. Peaslee and Mr. Bartlett went in as I came out. Prisoner did not state deceased had reprimanded him for wearing out his clothes, nor that he killed for that.

Sullivan. Did you ever hear Chase Prescott say his father was not insane?

Bartlett. I object to the enquiry. Chase Prescott has been on the stand, and you should have asked him.

Sullivan. We wish to show that he has told many different stories in relation to the pretended derangement of his father.

Court. The evidence is incompetent.

Witness continued—As I lived a neighbor to the parents of Prescott, soon after the murder I went in and talked with them about it. The old lady, his mother, said he must have been crazy when he did it. His father said he was not crazy any more than the devil was—he said the devil was in him—he never knew of one of the Prescotts who was crazy. I was on the spot about 12 on the day of the murder; the grass was trodden down, comb, calash and stake on or near the spot trodden. The body had not been removed; person there keeping people off the spot where grass was trodden.

Timothy Robinson, sworn.

I reached the spot where the body lay on the 23d of June between 9 and 10, nobody there but Mr. Cochran; did not notice the appearance of the place; was gone 25 minutes after a physician; several were present when I returned; comb and calash lay within a few feet of each other; for four feet round the grass was much trodden.

Henry M. Robinson, sworn.

I reached the spot where it was supposed Mrs. Cochran was killed, precisely 15 minutes before 10; grass was ruffled, tread down some: comb, calash, &c. lay on the spot. Basket half full strawberries, turned partly over.

Cross examined. Think the grass was not more trodden than her falling and dragging away would occasion.

Dr. Samuel Sargent, called again.

The appearance of the grass when I got to the place, was as if trampled down 4 or 5 feet round—comb, calash and basket lay on one side—I was going to examine, when Jonathan Robinson objected—said he wished no one to go on to the spot. The comb was large, such an one as ladies wear on the back of their heads,—one tooth was gone.

G*

Cross examined. Six or seven persons were present when I reached the scene of murder. Death would be as likely to ensue from a blow on the back part of the head, as on the sides—directly on the temple perhaps a blow would as soon be fatal.

William Knox, sworn.

I arrived on the spot about 12 o'clock; the grass, on or near which the calash, comb, club, and basket, canted down, lay, was trodden down in a circular form for 6 feet; should suppose there had been a scuffle. I once heard the father of the prisoner state, in conversation with Mr. Peaslee, that insanity was not hereditary in his family—he never knew any of them to be crazy. He had been almost crazy himself, with the tooth-ache.

Cross examined. There was every appearance of a struggle—should have thought so, had the spot trodden down been but half as large. The grass was high, and trodden down—and you could see where the body was dragged off. I know Moses Prescott—he is or was recently under guardianship.

Adjourned to 3 o'clock, P. M.

The Court met according to adjournment.

Benning W. Sanborn, sworn.

Resided in Deerfield 45 years; was acquainted with Mrs. Blake, while living, 20 or 25 years; lived within a mile and saw her frequently, but never considered her crazy.

Cross examined. There were troubles in Mr. Blake's family before and after he came to Deerfield; don't know the cause: they did not come to me with their troubles.

Jeremiah Batchelder, sworn.

I live in Deerfield; knew Mrs. Blake; resided 28 years within 35 rods, and never heard of her being insane.

Cross examined. I have heard of troubles in the family, don't know the cause.

Dr. John Pillsbury, called again.

I resided in Candia about 30 years ago—lived within half a mile of Mrs. Blake, and was well acquainted with the family. I never knew Mrs. B. to be crazy, never heard, or suspected any thing of the kind.

Cross examined. Mrs. Blake resided in Candia when I did. I was there perhaps once a week or fortnight; it strikes me she was once absent for a season, but do not know how long, or under what circumstances. She had a fever when at Deer-

field, after I removed to Pembroke, and was transiently deranged by the fever, as is common in all fevers; but got well—never heard of her derangement continuing.

Andrew O Evans, sworn.

I was acquainted with Mrs. Blake about 34 years—she lived in Candia—I in Allenstown, 9 miles distant. In 1801 or 2, Mr. Blake came to my father to get his aid in settling some difficulties between Blake and his wife. He went, and they became reconciled. Blake sold out at Candia, removed to Deerfield, about 4 or 5 miles from where I lived, and opened a tavern. I knew Mr. Blake until his death, and Mrs. B. until she removed to Lowell. Have been a great many times at their house, passing up and down, and never heard of Mrs. Blake being crazy, or deranged in the least. I have known the prisoner since he was a child. His parents live about 4 miles distant—the boy used to go to our school—lived sometime at Mr. Kimball's—and I never heard of his being insane until since this prosecution commenced.

Cross examined. I don't recollect of ever having seen Mrs. Blake but once, in Candia, saw her often at Deerfield; don't know the nature of the difficulty my father went to settle; heard nothing of Mrs. Blake's straying away from home till to-day.

Hall Burgin, sworn.

Was very well acquainted with Mr. Blake and wife. He used to do our tailoring—and I was frequently at his public house. I never saw or heard of Mrs. Blake's being deranged until I heard it mentioned here. I have heard of some difficulties in the family—but don't know their nature. I know the prisoner at the bar, and have known him since he was very small. He has lived near, and worked for me, and I never heard of his being insane.

The *Court* here suggested that this evidence was unnecessary, as the counsel for prisoner do not pretend that he was insane previous to the time of killing.

Bartlett. We should rather they would put in their evidence.

Attorney General. We could prove the same facts by twenty witnesses.

Court. It must be presumed that up to the time of the killing the prisoner was sane.

Witness. Never saw anything like derangement in the boy; discover no difference in the motion of his eyes since quite young; he is naturally downcast, has always been so; has a dull look.

Cross examined. Did not know of Mrs. Blake's absence from home till yesterday. Never knew any harm of the prisoner. Cast of eye, looks, all appear the same as they ever did, except he is paler since he went to prison than before.

John Johnson, sworn.

Have known the prisoner most of the time since he was a small child. He was absent some, but from 1824 to 1830, used to see him once a week, and sometimes every day in the week. He went to our school. I never discovered any symptoms of derangement—and never heard of it until since the murder. There is no difference in the appearance of his eye now from what it always was.

Cross examined. I know no harm of the prisoner personally.

Chauncy Cochran, called again.

The prisoner lived with me 3 years, and never exhibited any symptoms of insanity. His parents visited me after the winter transaction and said they never knew him to get up in his sleep before; said it was strange. No difference in his eyes. He always had a dull eye and down look: motion of his eye slow—scarce ever looked any man in the face. Grass was not noticed by me.

Cross examined. Prisoner was living with me as an apprentice—was not bound. I once applied to Esq. Cochran to make writings; he advised me to have nothing to do with the Prescotts.

Samuel Cochran, Jr. sworn. When I reached the place of the murder it was between 12 and 1 o'clock. The grass near where the calash, &c. laid, appeared trodden down in a circular form. One tooth was broken in the comb; one ear-ring in the ear unlocked; body had not been removed. Am acquainted with the prisoner; never insane: appearance as formerly; no difference in the appearance of his eyes—always dull, downcast and heavy, slow in their motion—his complexion now appears lighter.

Cross examined. Visited prisoner in jail. Dr. Pillsbury was present, don't recollect others. Have not been employed as agent in the case. Saw Mrs. Critchett at request of Attorney General.

John Kimball, sworn. Am well acquainted with the prisoner—he lived with me 18 months before he went to Mr. Cochran's; same motion of eyes then as now; never insane: intelligent, showed no bad temper while with me: afterwards he told me that he would as soon kill his brother as not, if he got mad with him: then about 14 years of age: good boy to work.

Cross examined. Clever boy ; did no hurt ; no act of violence, while he lived with me.

Mary Critchett, sworn. Have known the prisoner since 4 or 5 years old : passionate, ugly-tempered boy always : never bad to me ; he would get in a passion with his relatives. Once he got mad and told his brother Jonathan he would as soon kill him as a snake. I did'nt suppose he intended to do so. No difference in his eyes ; always had dull, heavy eyes, slow in motion.

Cross examined. His brothers were not very pacific ; used hard words, but did not come to blows—three brothers of them—did not see any other boys so bad-tempered as the Prescotts.

Francis Bickford, sworn. I have been acquainted with the prisoner about 20 years ; never insane ; always dull-eyed, passionate ; when 6 years old threw an axe at me for threatening to whip him. Never heard of any of the Prescotts being crazy until this trial. He was a boy of good understanding, intelligent as other boys.

Cross examined. Axe did not hit : he ran off to house : then about 6 years old.

William Abbot, Jr. sworn.

I arrived at the spot of the murder about 10 o'clock ; four persons were then present, Jona. Robinson, his two daughters, and Mrs. James Cochran. I noticed the grass trod down from four to six feet round ; there might have been a scuffle. Comb laid near her calash, saw her pulse had done beating and went away. I have known the prisoner 7 or 8 years ; his natural abilities I always considered good. He was rather passionate. I knew of his whipping Mr. Cochran's cattle once or twice, had spoken of it to Mr. Cochran. His appearance now, as to his eyes, is the same as formerly : always had a dull, down look—slow motion of his eyes—would never look any body in the face. He is a boy of good understanding, as to work, as any other. There were no strawberries in the field where the prisoner and deceased went.

Cross examined. I have labored 100 days, probably, with the prisoner, and never knew him angry with any one. The prisoner and deceased must have got over a fence to have reached the lane from James Cochran's pasture. I found him first after the killing in that pasture, lying on his face, with his shirt under his head. He was making a noise like one crying in deep distress, but shed no tears. I asked him what was the matter ; he replied, he had killed Sally. I inquired how ; he said he sat down by a root, having the tooth-ache, there he supposed he got asleep, for he was conscious of nothing until

he found he had killed her. He made no attempt to escape, and apparently slept soundly that night, at my house. I asked him why he had taken off his shirt; he informed me that he had thoughts of hanging himself with it, for he supposed they would hang him.

Samuel Martin, sworn.

I have been acquainted with the prisoner from a small child; always considered him a person of sound mind, as intelligent as boys in general, always had a dull, slow motioned, downcast eye. He was a passionate boy. I thought him bad tempered from his being violent in his scuffles with other boys in my blacksmith shop.

Cross examined. I have stated all the circumstances from which I infer that the prisoner was bad tempered; he scuffled in earnest.

Samuel Tuck, sworn. Old Abraham Prescott had 9 sons and 3 daughters. I was acquainted with some of them. I never knew any of the sons deranged. Marston Prescott was deranged, and used to drink cider.

Jonathan Fellows, affirmed. I was acquainted with Abraham Prescott, the grandfather of the prisoner; never knew him to be deranged; have heard that he was so; never knew of his children being deranged; he had 9 sons and 3 daughters.

Cross examined. Abraham Prescott was said to be deranged; I saw him 3 or 4 times a year. Marston Prescott was crazy; when 40 or 50 years of age he was intemperate.

Mary Leach, sworn. The prisoner was committed to jail a year ago the 24th of last June. He has ever appeared very sedate; of a sound mind, and paid strict regard to truth. I have had the care of him most of the time. He has been a very good prisoner; always behaved well; never insane. I considered him not so intelligent as boys in general. He never talked much.

Andrew Leach, sworn.

I am keeper of the jail in this county; never discovered any signs of derangement in the prisoner. He once freed himself of his irons, and attempted it again, when I removed them on his complaining that they hurt his ankles. I don't know that he ever made any attempt to escape; one was made from the apartment in which he was confined with others. His intellect was not so good as that of boys in general.

Cross examined. I inquired of the prisoner if he took part in the attempt to escape; he made no reply. Carr, who was in the cell at the time, was a bad fellow. The prisoners never made

any exhibitions of bad temper; no complaint of it from his inmates. After I removed the irons from his legs, he made no attempt to escape.

Amos D. Blaisdell, sworn.

I was confined in jail for a debt of fifty dollars, at the time of the attempt to break out. The prisoner assisted in it, and talked of running into Canada. He blamed the boy for not watching better, so as to have prevented discovery by Mrs. Leach.

Cross examined. I live in Deerfield; was in jail 2 months and 14 days on a \$50 debt; staid thirty days after judgment; have not yet paid the debt. I am a shoe maker by trade; nothing but my hands to get a living with. Carr started the project of breaking jail; the prisoner seconded the design. I was not engaged in it; merely looked on.

Here the counsel for the government rested the case.

Jonathan Robinson, called again by the prisoner.

I arrived at the place of killing next after my children. There were strawberries in the vicinity; I saw them picked. The spot was on James Cochran's land; there is no fence between it and the barn belonging to the husband of the deceased, in the direction usually gone.

Lucy Robinson sworn, called by the prisoner. I always lived the nearest neighbour to Mr. Cochran while the prisoner resided with him. I never heard any ill spoken of him but have often heard him spoken well of. On the 6th of Jan. 1833, the prisoner came to my house and called me up, saying that he had struck Chauncy and Sally with an axe in his sleep. I went immediately to the house and found Mr. Cochran insensible, and Mrs. C. able to speak. The prisoner was making lamentation in the other room. I never heard any complaint of his want of attention, during their confinement. Mrs. C. used to say that Abraham ought not to be blamed; if he had been awake he would have hurt himself as quick as them. I am acquainted with the field where Mrs. C. was killed; there used to be strawberries there; saw some at the time. I noticed the spot where the calash, &c. lay—and saw no evidence of any scuffle—no marks of other derangement in the apparel of the deceased, than would be consequent on removal by dragging.

Cross examined. I didn't think of the place of killing being particularly retired, until I heard it mentioned—it looks lonely now—it is not in my opinion, surrounded by woods on 3 sides—no house in sight. Descent all the way from the barn to the spot. Strawberries had been plenty in the vicinity years before. I saw some then.

Belinda Robinson, sworn, called by the prisoner. I arrived on the spot next after Mr. Cochran, and my brothers. The grass was not more trodden down than I should have expected from the knocking down, &c. I was in that field strawberrying the year before, and went to it as the best place.

Abner P. Stinson, sworn, called by the prisoner. I went several times into the prisoner's cell, while here last September. He usually answered in the affirmative whatever questions were proposed to him; seemed disposed to soothe the feelings of the questioners. I recollect of accompanying the prisoner's counsel to his cell, and meeting Norris Cochran at the door: prisoner was weeping. When Mr. Bartlett asked what ailed him, he replied that he had killed Mrs. Cochran.— I don't distinctly remember what conversation followed. I was with Mr. John L. Fowler at the time of the confession he has spoken of. I think I either suggested then, the motive the prisoner assigned for having killed Mrs. C. or had done so previously.

George C. Thompson, sworn; he was called by the government. I was present at the time of the confession spoken of by Mr. Fowler and Maj. Stinson. I removed McDaniel and then stood at the door. Mr. Fowler asked the prisoner his motive for killing Mrs. C. He repeated the old tooth-ache story. Maj. Stinson told him that would'nt go. Mr. Fowler asked him if there was any quarrel between them. He said no, he believed he liked her too well. He then went on to say that he insulted her by proposing an improper question—that she reprimanded him by calling him hard names—he retired and sat down by the stump. He there thought she would inform Mr. Cochran, and he should have to go to the State prison: to avoid which, he would kill her. She had started for home, and was stooping to pick strawberries by the way. He seized the stake, came up behind her unperceived, and struck her on the head, just as she was about to look up. When asked by Mr. Fowler as to the motive for the winter transaction, he said Mrs. C. once reprimanded him for running about Sundays and nights, wearing out his clothes, and said if he didn't stop he would be no more respectable than his brothers—that he never liked her for that and always remembered it.

Cross examined. I was absent removing McDaniel, perhaps 2 minutes, never heard any other confessions. I recollect Maj. Stinson's observing that the prisoner's stories didn't agree very well.

Here the counsel on both sides informed the court that the evidence was all offered, and it being sunset, the farther prosecution of the trial was postponed until Thursday morning.

The court then adjourned.

THURSDAY, September 11, 1834.

The court opened at nine o'clock, when Mr. BARTLETT, of counsel for the prisoner, addressed the jury, as follows:

May it please Your Honors:

Gentlemen of the Jury:—

The Government demands of you the conviction of the prisoner at the bar upon the charge of murder. Having been requested by the Court to aid in his defence, I now rise to close what little remains of any service which his counsel may render him. The ordinary duties of our profession may become familiar by repetition, and we may come to the discharge of them with diminished anxiety and concern. But it is with me far otherwise, where the issue is life or death. Unimportant as may be deemed the efforts of counsel, I cannot release myself from the conviction, that whether made with fidelity or with negligence, they may have some connexion, perhaps for weal or woe, with the destiny of a fellow mortal here and hereafter.

From the feeling of anxious solicitude with which I find myself oppressed,—I cannot be insensible to the awful responsibility of your situation.

The counsel for this unfortunate young man have not approached the discharge of their duties in this case, without a full—an almost disheartening view of the difficulties, *ordinary* and *extraordinary*, in all their magnitude, which were to be encountered.

In every case, the charge of a crime of great enormity at once enlists the virtuous feelings of the community against the accused. Even the forms of law aid in countenancing such prejudices. No harsher epithets are to be found in our language, than this Indictment sanctions—and although we may say, that the accused is to be presumed innocent until he is proved guilty;—yet no individual ever stood at the criminal bar, when an influence the reverse of that was not produced upon our minds, by that situation alone. Yes—every eye in this vast assembly has been fixed upon this lad, to see “the murderer.”—Every mind has already imagined in his childlike, inoffensive appearance, the indelible marks of blood-stained guilt. He stands here to contend with the Government. However exalted—however powerful an individual may be,—such a contest places him at fearful odds.

H

In no trial was there ever placed at the bar a more forsaken, friendless, helpless child of misfortune;—nor placed there under circumstances calculated to excite prejudices more fierce and unrelenting. If *he* is not sensible of his obligations,—his counsel cannot but feel grateful to the honorable court, for affording all the facilities in their power to give to the prisoner a fair trial; but no pecuniary aid, which they could give, would ever supply the want of intelligent and zealous relatives and friends to aid counsel in their inquiries and remedy their want of knowledge of his life and habits.

Even if in other places and other occasions, he might have had friends, such is human nature,—his present situation is not that in which kind offices are usually proffered. But destitute as he may be of relatives, who have either capacity, or means to assist him—limited as may have been his opportunities, in his humble condition of life, of attaching to him acquaintances and friends—two friends he had secured by a course of unexceptionable, exemplary conduct, not surpassed in any condition in life—a friendship partaking of parental kindness and affection: One of whom now sleeps in the grave—sent there by the hand of him who was to her as a dutiful son—while the afflicted, bereaved husband stands here his prosecutor,—stands here looking upon the accused, as if his hand had shed a parent's blood, and illustrating in his feelings the truth of the great philosophic poet—

“How sharper than an adder's tooth
Is the ingratitude of a thankless child.”

In most cases of homicide, some doubt may exist as to the identity of the offender—some uncertainty whether the wounds were the cause of death. Here no such doubts exist—no such uncertainty remains. The perpetrator stands unconcealed before you—the bloody garments in which the horrid act was accomplished have been exhibited—no apology—no excuse—no existing quarrel—no provocation is pretended. It was not to be rid of an enemy—it was not a contest with an equal. The victim was an unarmed, unoffending female—a sincere friend, an affectionate wife, a fond and devoted mother. The mangled corpse of the deceased—the afflictions of the bereaved husband—the tears of motherless children, have been made to call aloud for vengeance. The tragic story has been repeated at every fire-side and every repetition has added new horrors. It has brought an exasperated, an enraged populace even around the doors of the temple of justice, demanding the execution of the accused, and impatient even of the delay of the forms of a trial.

If the nature of the charge, the character and manner of the offence, present difficulties to an impartial examination of the question of guilt or innocence: a difficulty not less formidable is to be encountered in the nature of the defence. It is INSANITY. *Insanity!* And what have we learned of insanity, but the incoherent ravings of the mad-man, or clanking of the chains of the maniac? Who will for a moment listen to the excuse of insanity for an act of such atrocity, from one whose whole life has been a regular and quiet and intelligent discharge of the duties of his humble station? Who has known of his being irrational? Who has heard of a single act of derangement of his? Here we *feel* how little we know of the human mind—the force of the truth that we are “fearfully and wonderfully made.”

How impossible to exhibit proofs of isolated acts of derangement, where the disease is not a total prostration of intellect—a settled and permanent mania? We have come to meet these difficulties as we may. The law has humanely allowed the prisoner the right of challenge—in effect, the right to choose his jury from the pannel. In the selection, which has here been made, Gentlemen, his counsel have not sought protection for the accused in the fears of the timid, or want of discernment of his triers. They have failed of their purpose, if they have not chosen for this responsible office, men of fearlessness as well as intelligence. Men, who have that true courage, which *dares* meet the charge of *cowardice*—men, who will fear not to pronounce their *own* judgment, regardless of the clamors which shall assail you from the streets—or even within the walls of this house.

In proceeding to exercise the power, which the law has imposed, or assumed to impose upon you, the counsel associated with me has eloquently urged upon you to divest yourselves of all influences, which popular feeling may have produced. I fear not, Gentlemen, that you will be under its guidance, if *conscious* that it directs or sways your judgment; but we must have shut all our senses, not to have seen and heard enough to convince us, that we are in the midst of an “infected district”—the poisonous influence of infection or contagion may be working their fatal consequences, while we perceive not their effect, till too late. Guard against every unfavorable bias: put away every unkind impression. Yes, “put the shoes from off thy feet, for the ground on which thou standest is holy.”

Judges, as you are, both of the law and of the fact, and called upon to take the life of this individual, it is competent for you—it is your duty to enquire, whence comes that power of

life and death. If you believe you possess it—if still it be doubtful—or if the exercise of it be of more than doubtful expediency, you will demand the more clearness of proof—you will tread the more cautiously on such questionable ground.

I ask your indulgence to submit a few remarks upon the question of your *right* to take life; and if on that you *doubt*, I demand of you to stay your hand. If you have the abstract right to take life, permit me still to offer you some suggestions relative to the *expediency* of its exercise, not for the purpose of deterring you from executing the law, if the law is clear and the case already within it,—but that, if you see the exhibition of a public execution in the county, would entail irremediable evil upon the community, you would find yourself compelled by your evidence, before you pour upon us that worse than Pandora's box, filled with unmixed evil, and not even hope at the bottom.

We are at once asked, how is it possible to doubt your power to take life? Is it not enacted in so many words in our statute book? Yes, and so once was there the like punishment for robbery, burning, burglary and witchcraft too: but whence does the Legislature derive the power of thus enacting? We may be answered: they have the authority of all ancient time and of almost every government. So has the rack, the wheel, and other engines of torture. Our immediate ancestors retained upon their list of offences punishable with death more than two hundred crimes, until the efforts of Sir Samuel Romily and other philanthropists recently reduced that bloody catalogue to one hundred and sixty two. With such a list of Capital crimes, with the aid of the engines of torture to make or extort proof,—we need not be surprized to find that seventy two thousand persons perished on the scaffold in England during the reign of one prince alone, Henry the eighth. The diffusion of light and the progress of improvement, has, in its onward march in this country, left only a relic of this ancient barbarism. The number of offences now punishable with death by the laws of the United States is only nine. But where does the Legislature find its authority for inflicting death as a punishment at all? In case of murder, it is urged, that the authority is from Deity—that it is the express command of God. That this command is found in the text—“Whosoever sheddeth man's blood, by man shall his blood be shed.”

The ecclesiastics of the early ages so sought for and so found in the scriptures occasions for the exercise of temporal power—at the same time, that by the interpretation of other texts they found means of averting its penalties from their own

heads. This derivation of the power of taking life is like the origin of the benefit of clergy," which is coeval with it and derived in the same constructive manner, from the text, "touch not mine anointed and do my prophets no harm." Under this protection, the clergy would commit offences with comparative impunity: and such were the times to which we look back for light, that all who could read were deemed to be clergymen, and peers and peeresses of the realm, even if they could not read, were admitted to its rights as of special grace.

The counsel associated with me has very forcibly urged that the words so often cited, are not a true reading of the original text. If they were, is a christian community to be governed by the ordinances of the Jewish Theocracy? Then must we take the whole law of retaliation—"an eye for an eye, and a tooth for a tooth"—then may we renew the scenes of the 17th century under the command "thou shalt not suffer a witch to live." Then must we abolish the whole code of christian virtues and christian morals. In the fourteenth volume of the Christian Examiner, an able essay may be found, in which it is contended that human murderers are not referred to in this text—but that man is simply permitted or commanded to kill any beast that might occasion the death of a man, and that the original would be as literally rendered and more in consonance with the context—"Whatsoever beast occasions Man's death, by man shall his blood be shed." But if the original be truly rendered, is this a command, or is it merely a prediction? Dr. Franklin says, "I suspect the attachment to death as a punishment for murder in minds otherwise enlightened upon the subject of capital punishments, arises from a false interpretation of a passage in the old testament—and that is, "Whoso sheddeth man's blood by man shall his blood be shed." This has been supposed to imply that blood could only be expiated by blood: but I am disposed to believe with a late commentator upon this text of scripture, that it is rather a prediction than a law. The language of it is simply that such is the folly and depravity of man, that murder in every age shall beget murder. "Laws therefore, (says this great philosopher) laws which inflict death for murder, are as mischievous as those which tolerate revenge."

"Whoso breaketh a hedge, a serpent shall bite him—Whoso removeth stones, shall be hurt thereby"—would equally well justify being construed into commands. The commentator referred to by Dr. Franklin, was the Rev. Wm. Turner, who says of that text—"to me I confess it appears to contain nothing more than a declaration of what will generally happen, and

in this view to stand exactly upon the same ground with such passages as the following; "He that leadeth] into captivity, shall go into captivity—He that taketh up the sword shall fall by the sword." The form of expression is precisely the same in both texts. Why then may they not be interpreted in the same manner, and considered not as commands but as denunciations? And if so, the magistrate will no more be bound by the text in Genesis to punish murder with *death*, than he will by the text in Revelation to sell every Guinea Captain to our West India planters."

Whatever reading, however, is given to the text so often cited, it cannot be distorted into an authority for our process of punishment with death. It was only "at the hand of every man's brother" that this vengeance was required. No, the LAW designed for universal application in all ages—the law proclaimed by Jehovah himself in the thunders of Sinai—the law unrepealed by the christian dispensation, is, "THOU SHALT NOT KILL."

Are we to be told, that the Legislature have enacted that murder shall be punished with death: and that there you must stop your inquiries? Do not our courts judge of the constitutionality of laws, and decide them void? To *you*, in criminal trials, is expressly reserved the same power, and if our constitution had provided, that death in no case should be inflicted as a punishment, would you be bound to execute this statute? Whatever may be said of the union of Church and State, I hesitate not to say, that the principles of the christian religion are the foundation upon which our government rests, and that no republican government can exist, that does not recognize them. But for the sanctions of religion, what idle mockery would be the ceremonies and forms and *oaths* even of this solemn tribunal? That religion imposes upon us obligations above the force of human law, and for the violation of which no human law can give us dispensation.

Whatever, then, may be found in any human code, if the law of the Ruler of the Universe, if the christian religion does not sanction the taking of life by human tribunals, then as you hope for future salvation, lift not in supplication to Heaven, your hands stained with the blood of your fellow man.

Again, it is urged, that government acquire the right of inflicting *death*, as a punishment, by the compact into which individuals enter, when they form the social state. When individuals become members of civilized society, they do surrender a portion of their individual rights, and the society acquires the aggregate of all the rights thus surrendered by the individual

members—and no more. Has then the individual this right over his own life, either to exercise or surrender? In other words—may he commit suicide? If he may not take his own life, when weary of it, with his own hand, may he then depute another to do it? May he agree, that five, ten, an hundred others shall unite in the act? Can he give to society what he does not possess—the right over his own life? Unless suicide can be defended, these questions admit of but one answer. I do not deny the right in the individual or society to take life—I admit it only in the single case of self defence—to preserve life. If my own or my assailant's life must be taken, I have the right to choose the preservation of my own. And so when the existence of society is endangered—but not for punishment. Can this theory of self defence ever justify society in taking the life of a prisoner, who is completely in their power, and who can be easily restrained from violence, or any act to endanger its existence or its peace?

I present these considerations to you, as the judges of the law, to say whether you have without any doubt the right which you are called upon to exercise—for I hold that if you have doubts as to the law, they, like doubts as to the fact, acquit the prisoner.

If the Legislature had the technical right to enact such a law, then I grant, however inexpedient it may be deemed, you are bound to execute it. But I shall submit to you some considerations upon its *inexpediency*, for another purpose. It is this. That if the execution of such law is attended with consequences only of unmixed evil, you should adopt no forced construction, create no presumptions, imagine no proofs, to bring a case within its operation.

The expediency of the punishment of death is attempted to be justified upon the ground, that the enormity of certain offences requires a punishment the most terrible in form to deter others from the commission of them. Now if the class of the community upon whom the punishment of death is intended to operate, are but little influenced by its terrors; if the infliction of it has a direct tendency to demoralize and degrade the public sentiment; if it is subject to other insuperable objections, which apply to no other mode, then its expediency cannot be sustained.

It is in the first place, peculiarly unfitted to the object intended. “Can we believe (says an eloquent writer) that the fear of a remote and uncertain death will stop the traitor in the intoxicating moment of fancied victory over the liberties and constitution of his country? While in the proud confidence of suc-

cess, he defies heaven and earth, and commits his existence to the chance of arms. Will it arrest the hand of the infuriate wretch who at a single blow is about to gratify the strongest passion of his soul in the destruction of his deadly enemy?—Will it turn aside the purpose of the secret assassin, who meditates the removal of the only obstacle to the enjoyment of wealth and honours? Ambition, which usually inspires the crime of treason, soars above the fear of death. Avarice which urges the secret assassin, creeps below it. Passion, which perpetrates the open murder, is heedless of its menaces. Threats of death will never deter such men. They affront it in the very commission of the crime. The uncertainty of the punishment reduces the chance of the risk to less than that, which is voluntarily increased in many pursuits of life. Soldiers march gaily to battle with a certainty that many must fall: while there is a chance of escape, the happy disposition of our nature makes us always believe it will be favorable to us. If the fear of death could deter from the commission of crime, then we should not see in the history of the plague in London, the details of the rush of thieves into the places of thick infection to plunder even the apparel from the dying victims of the disease; or accounts of similar scenes in our own cities, during the prevalence of the yellow fever in ninety eight. In the testimony laid before the British Parliament upon this point, a solicitor of twenty years practice in the criminal courts stated, “that in the course of his practice he found the punishment of death had no terror upon a common thief, indeed it is much more the subject of ridicule among them, than of serious reflection. The certain approach of immediate death does not seem to operate on them, for after the warrant has come down, I have seen them treat it with levity.” He observes, “I once saw a man for whom I had been concerned, the day before his execution, and on offering him condolence and expressing my concern for his situation; he replied with an air of indifference, “players at bowls must expect robbers;” and this man I heard say, “that it was only a few minutes—a kick and a struggle and all was over!” The fate of one set of culprits in some instances had no effect, even on those who were next to be reported for execution; they play at ball and pass their jokes as if nothing was the matter. So far from being arrested in their wicked courses by the *distant possibility* of the infliction of capital punishment, says the witness, they are not even intimidated by its *certainty*. The Ordinary of Newgate, the individual of all men of the best means of observation, being asked on the same examination, what was the effect of the sentence of death upon

the prisoners, answered, "it seems scarcely to have any effect at all upon them. The generality of people under the sentence of death are thinking and doing rather any thing than preparing for their latter end." It may perhaps be thought, if it fail to produce any effect upon the mind of the convict, it still may have a salutary influence upon others by the public spectacle. Far otherwise. In some instances public sympathy may be excited. Then the culprit becomes a hero or a saint. He is the object of public attention, admiration and pity. Charity loads him with her bounties and Religion vouchsafes her blessings, and as in the case of the mail robber, Hull, he marches to the gallows with all the honors of a triumphal procession. In other instances the ferocious passions are excited and scenes of a different character are exhibited. The failure of any good influence from such a spectacle was illustrated at a public execution in Lancaster in Pennsylvania in 1822. An immense multitude attended the execution of a convict for murder. A paper of that city remarked—"It has long been a controverted point, whether public executions do not operate on the vicious part of community more as incitements to, than as examples deterring from the crime. One would believe that the spectacle of a public execution produces less reformation, than criminal propensity." At the execution referred to, twenty-eight persons were committed to jail on the night following, for offences such as larceny, assault and battery, and even murder. "The pick-pockets generally escaped, or (says the editor) the jail would have overflowed." The murderer who was afterwards convicted, was committed to the same jail and had the same irons put on him, which had been laid off by the person executed, scarcely long enough to get cold." At a recent execution in England for the crime of picking a pocket, (and there stealing to the amount of one shilling from the person is punished capitally,) fifteen new offences were committed under the gallows, at the moment the convict was struggling in death. Another instance not less striking, was related at a public meeting in South Hampton in England. An Irishman guilty of issuing forged bank notes was executed and his body delivered to his family. While the widow was lamenting over the corpse, a young man came to her to purchase some forged notes. As soon as she knew his business, forgetting at once her grief and the cause of it, she raised up the dead body of her husband and pulled from under it a parcel of the very paper for the circulation of which he had forfeited his life. At that moment an alarm was given of the approach of the police, and not knowing where else to conceal the notes, she thrust them

into the mouth of the corpse, and there the officers found them. If such are the good influences of capital punishment, how is the fact as to the positive evil they produce? The most rational philosophy would teach us to expect evil from the very *principle* as well as *practice* of this mode of punishment.

We say to the citizen, *thou shalt not kill*, and attempt to enforce the law by perpetrating the same act under judicial forms. We denounce housebreaking, and arson, &c. and what would be the effect of sanctioning by law the breaking or burning the dwelling of the offender? It would be to familiarize the mind with the act. It would be to cherish the savage feeling of retaliation. It would be to feed the morbid passions, which are thus ripened into acts of atrocity. It would be to inspire that spirit of barbarism which was not long since exhibited in the interior of one of the largest states of this Union. "A poor wretch was condemned to the gallows for murder. The multitude assembled by tens of thousands. The victim was brought out—all eyes in the living mass that surrounded the gibbet were fixed on his countenance, and they waited with strong desire for the signal fixed for launching him into eternity. There was a delay—they grew impatient: it was prolonged, and they were outrageous. Cries like those which precede the tardy rising of the curtain at a theatre, were heard. Impatient for the delight they expected, in seeing a fellow creature die, they raised a ferocious cry: but when it was at last announced that a reprieve had left them no hope of witnessing his agonies, their fury knew no bounds, and the poor *maniac*, for it was discovered that he was *insane*, was with difficulty snatched by the officers of justice from the violence of their rage."

The liability of such a provision of law to abuse is not among the least objections to it.

How have tyrants generally obtained the heads of those who resisted arbitrary power? How have revolutionary usurpers deluged whole countries in blood? Not by claiming to take life without law, not by enacting new laws for the occasion, but by bringing all offensive persons within the *constructive* operation of some law inflicting capital punishment.

The learned philanthropist and statesman, our present Minister to France, Mr. Livingston, has published an essay upon the penal code, a work for which his memory shall be cherished long after all the distinctions of political eminence shall have been lost in forgetfulness. In that essay, of which these remarks are only an imperfect abstract, he observes, "History presents to us the magic glass, on which by looking at *past*, we may discern *future* events. It is folly not to read, it is

perversity not to follow its lessons. If the hemlock had not been brewed for felons in Athens, the fatal cup would not have been drained by Socrates. If the people had not been familiarized to scenes of judicial homicide—neither France or England would have been disgraced by the useless murder of Louis or of Charles. If the punishment of death had not been sanctioned by the ordinary laws of those kingdoms, the guillotine would not have deluged the one with the blood of patriotism, science, innocence, or the axe, in the other, have made a Sidney and a Russell the victims to party and to tyranny. "Every nation has wept over the graves of patriots, heroes, martyrs, sacrificed to its own fury. Every age has had its annals of blood." They may be traced to the existence of laws authorizing the taking of human life.

Another objection to this punishment, and an admonition to caution in inflicting it, is, that it takes away the possibility of correcting the errors of human tribunals, produced by mistaken testimony, false appearances or perjured witnesses. Let not this danger be lightly esteemed by those who have adverted to the records of human fallibility, even amid all the guards of legal forms. One of the sources of this danger is, where the afflictive dispensation of God is visited upon the *mind* of the unfortunate, and the melancholy effects of INSANITY are mistaken for the fruits of depravity. The mysteries of the human mind are known only to the Omniscient.

Evidence is daily accumulating of the thousands of instances, where persons in all the ordinary avocations of life, and even to those most intimate with them, shew no aberration of intellect, who yet, on some subjects, are afflicted with all the madness of the maniac in chains. And this perhaps is first exhibited by some fatal act of violence. The case of Jensen, which has been referred to, cannot be read without shuddering at the thought: had he succeeded in the death of his beloved child, his mental malady would have been terminated only by an infamous punishment. The history of criminal jurisprudence is black with cases of conviction of the innocent upon circumstances, which deceived—upon testimony that was untrue, and even upon false confessions of the accused: cases, as has been said, which show "the danger, the impiety even, of using this attribute of divine power, without the infallibility that can alone properly direct it."

The objection, however, in my mind, stronger than most others and one upon which I cannot well express all that I feel, is, in the attempt to make *death* a *punishment*, and to connect with

it infamy and horror, and all the superstitious dread of ignorance and irreligion.

And what is *death*? Nature shows us that it is the cessation, or suspension of our physical powers and faculties. Our christian faith assures us, that it is the transit from this state of probation to a more spiritual and permanent existence. What is the infliction of it then as a punishment? If it is the mere pain of its sufferings, they are ordained to us all, and perhaps in a much severer degree, than is endured by him, who dies by the hand of the public executioner. Let me ask any individual, who believes in the Christian scriptures, if he would give his voice for the execution as a punishment of one whom he believed to be pardoned of Heaven, and that he would pass from the gallows to a state of perpetual beatitude? Would he be party to his death, in the belief, that the termination of his existence *here* was the introduction to one of never ending misery *hereafter*? Would he thus rebuke the delay of Divine justice? Then indeed do we assume "to be as Gods."

The effect of this system is to associate death with infamy and horror, to surround the grave with gloom, from the first impressions of childhood to the last period of consciousness. The influence of this for evil upon the character of individuals and upon community, in all its extent, cannot be described. When the association connected with death by the use of it as a punishment of infamy shall have ceased, when our conduct and our customs shall not say in language, louder than our christian professions, that we look upon the grave only as a place of "gloom and dark despair," when our conduct and our customs shall better conform to a brighter faith, and drive from the portals of eternity the "gorgons and chimera's dire" with which ignorance and superstition have surrounded them,—then may the mind elevate itself from the earth, and chasten its contemplations with scenes beyond the hour of "life's feverish dream."

The good results thus anticipated, from the abolition of the infliction of the punishment of death, are not theoretical. The experiment, whenever made, has been attended with signal success. The Empress Elizabeth of Russia, soon after she came to the throne, abolished the punishment of death in all her extensive dominions. Her reign lasted twenty years, giving ample time to try the effect of the experiment, and Beccaria speaks with enthusiasm of the consequences it had produced.

Three years after Elizabeth had ceased to reign in the north of Europe, her great experiment was renewed in the south.

Leopold became Grand Duke of Tuscany, and one of his first acts was, a declaration, rigidly adhered to during his reign, that no offence should be punished with death. The result was in his own words, that his system "had considerably diminished the smaller crimes and rendered those of an atrocious nature *very rare*." During the twenty one years of his reign only five murders were committed in Tuscany, while in Rome, where the punishment of death was inflicted with great pomp and parade, sixty murders were committed in the short space of three months in the city and vicinity. And it is remarkable, says Dr. Franklin, that the manners, principles and religion of the inhabitants of Rome and of Tuscany were exactly the same. The abolition of death alone as a punishment for murder produced the difference in the moral character of the two nations. An illustration on this point nearer to ourselves is furnished by a comparison of crimes and punishments in the district of London and Middlesex with Louisiana. This comparison for seven years prior to 1818 shows that murder which was punished capitally in both places stood higher in Louisiana in the proportion of twenty-seven to one--while the crime of forgery and counterfeiting in London and Middlesex, where it is punished with death, stood higher than in Louisiana, where it was not subject to capital punishment, in the proportion of eighteen to one.

Gentlemen, I am aware it may be said that such considerations should be addressed to some other tribunal--to our law makers, and that you have nothing to do with them. With all deference, I contend you have to do with them, and they demand your serious reflection in pursuing your investigation. That I may not be misunderstood, I again repeat my purpose in addressing these views to you. On the question of your right to take life, if your statute book contains an enactment against the spirit and precepts of your religion, may I not ask you to leave the direction of a fallible legislature, for the guidance of an omniscient God?^f

While I have heard on my way to this house respectable and serious men expressing an opinion, "that it is time somebody should be hanged, that the good of society requires a public execution"--is it not proper to counteract such impressions--such influence, by showing, not the uselessness merely, but the positive evils introduced by the infliction of capital punishment? May I not urge its abuse, its irremediable errors, as reasons for caution and for doubt in coming to the fearful result of conviction? May I not ask you to pause and reflect, as has been before stated to you, upon "*the dangers, the impiety even, of using this attribute of Divine power without the infallibility that can alone properly direct it.*"

With this statement of my purpose, and of my apology for detaining you so long with these general remarks, I will proceed to the more direct examination of the evidence in this case.

“The general ingredients of the crime here charged, are,—The killing of a human being, by a person of sane mind, with malice aforethought.”

These points the Government is to establish, and to leave in your minds no doubt upon either of them.

You will, I may presume, hear much urged in behalf of the State, in relation to *presumptions*—that a human being is *presumed* to be sane—that killing without provocation is *presumed* to be with malice aforethought; and such are the general assertions of that same law, some of the qualities and consequences of which I have considered. That view of it I here present to you, that you may not give to any of its maxims more weight than they deserve. There is more safety—more truth, than in all *presumptions*, to take only the fact, in each particular case, upon the evidence, with your own sense applied to find the result. And then, if convinced beyond all doubt, say so—but say it only upon better foundation than mere technical presumptions.

If it were proved that a person deliberately, without any motive, killed his best friend, what would be the technical presumption? That he was sane, and did it with legal malice. But what would be the conviction of common sense—the irresistible conclusions of your own minds? Most assuredly, that his intellect was deranged. And would you give up your own understanding, and hang the accused, because a legal maxim could bring you to a result contrary to the fact, and prove an unconscious man *sane* and *malicious*.

A position, which I believe cannot be successfully attacked, and to which I shall have occasion frequently to advert, I here state in the original language of the learned Monsieur Georget, as found in the 10th Vol. Med. Chir. Rev. 486.—“Un act atroce, si contraire a la nature humaine, comis sans motif, sans interet, sans passion, oppose au caractere naturel d’un individu est evidiment un acte de demence.”

“An atrocious act, if contrary to human nature, committed without motive, without interest, without passion, opposed to the natural character of the individual, is evidently an act of insanity.”

The mere mentioning of the word *insanity* brings before

me in their dread array the difficulties we have to encounter in the common error—I fear *too* common upon that subject. That opinion undoubtedly is, that to excuse from crime, it must be the madness of Bedlam,—that the entirely senseless maniac alone is irresponsible; but that to have the knowledge of right and wrong—of cause and effect—to have the capacity to devise and the art to execute schemes of violence and wrong, would at once take away all such excuse. Such is not the law.

While no other act in the life of an individual may have shewn an aberration of intellect;—while his knowledge of right and wrong, upon topics generally, may be perfect;—while the means of judging of effects from causes may be entirely unimpaired—yet he may be subject to a morbid DELUSION of mind,—a partial disease, termed by the profession *Monomania*, not even discoverable to his ordinary acquaintance, and sometimes not seen by intimate friends, under the influence of which he is no more responsible for his acts, than, in the language of Erskine, in the case when “the human mind is stormed in its citadel and laid prostrate under the stroke of frenzy.” We have already read to you largely from the argument of this distinguished advocate on the trial of Hadfield, because he has there treated this most difficult subject with that philosophical research and legal discrimination which has not since been surpassed, and which cannot be impeached. Where speaking of the different classes of cases, permit me to repeat again a sentence or two of what you have once heard.

“Another class, branching out into almost infinite subdivisions, under which the former and every other case of insanity may be classed, is where the *delusions* are not of that frightful character,—but infinitely various and often extremely circumscribed,—yet where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact; and those are the cases which frequently mark the wisdom of the wisest in judicial trials, because such persons often reason with a subtlety that puts in the shade the ordinary conceptions of mankind; their conclusions are just and frequently profound, but the premises from which they reason, when within the range of the malady, are uniformly false—not false from defect of knowledge or judgment, but because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.”

“DELUSION, therefore, where there is no frenzy or raving madness, is the true character of insanity.” (1st Vol. Ersk. Speeches, 499.) [Mr Bartlett, in illustration, here stated the leading facts of the case of Hadfield, of Greenwood, of the gentleman who prosecuted his brother and the keeper of the Asylum at Hoxton—of Wood, who indicted Dr. Monro for false imprisonment, there referred to,—and of Frederic Jensen, as related in Combe on Mental Insanity, 336.]

The views which I wish to present upon this subject, said Mr. B., are so well expressed by the learned judge in the case of *Dew v. Clark*, in the 3d of Adams' Ecclesiastical Reports, page 79,—that I must take the liberty to give them in his own language. “It may safely be assumed, (says the judge,) at least to the present auditory, in the outset of this inquiry, that madness subsists in every variety of shape and degree. It subsists in the maniac chained to the floor,—it subsists in the patient afflicted with mental aberration on certain subjects or on a certain subject only; and in respect of such even never betraying itself in violence or outrage. The affliction is the same in both cases in species;—the difference is only in degree.—The intermediate degrees between the highest and lowest grade of insanity are almost infinite. Patients afflicted with this terrible infirmity, in some minor degree often conduct themselves rationally in all but *certain* respects, and this not in show or semblance only, but in truth and substance. Instances have occurred of patients in Bedlam, employed as keepers, in some sort, of their fellow madmen; they themselves being at the same time *essentially* insane. It is well known, that a sufferer in this class, who fancied and styled himself, Duke of Hexham, became the agent of his own committee for the management of his own estate, and did for a time the duties of that office, it is said, not incorrectly. Few madmen are *so* mad as to be incapable of some degree of self control; and the cunning which madmen are often found to exercise, if bent upon carrying some favorite point, is a circumstance of the malady too well known to require any specific illustration. Instances again of the extraordinary power of, at times, concealing their infirmity, commonly inherent in madmen, are familiar to most people, as having occurred within their own personal observation. Still, however, with all this, among the vulgar, some are for reckoning madmen those only who are frantic, or violent to some extent. Insanity, however, decided, unaccompanied with *such* symptoms, *they* are con-

tent to refer to eccentricity or extravagance. Others, again, in the opposite extreme, are apt to confound mere folly with frenzy; and to describe as odd or eccentric, or in some such phrase, patients, who in better judgments, are actually and *essentially* insane. What then, to come back to our proposed subject of inquiry, is the true criterion of insanity? and principally how is it distinguished (this being obviously our principal concern) from eccentricity or extravagance merely."

"The true criterion—the true test—of the absence or presence of insanity, I take to be, the absence or presence of what, used in a *certain* sense of it, is comprisable in a single term, namely, *delusion*. Wherever the patient once conceives something extravagant to exist, which has still no existence whatever but in his own heated imagination; and wherever, at the same time, having once so conceived, he is incapable of being, or, at least, of being *permanently* reasoned out of that conception; such a patient is said to be under a *delusion*, in a peculiar *half* technical sense of the term; and the absence or presence of delusion, so understood, forms, in my judgment, the true and only test, or criterion of absent or present insanity. In short, I look upon delusion, in this sense of it, and insanity, to be almost, if not altogether convertible terms—so that a patient under a delusion, so understood, on any subject, or subjects, in any degree, is for that reason, essentially mad or insane, on such subject, or subjects, in that degree."

"The court (observes the judge) is confirmed in, or rather possibly has derived this, its own view of the subject, by, and from writers, as well medical as others, best qualified to discuss it, and upon whose authority, accordingly, it may safely rely."

I present these views to you, not with any pledge, or any promise that we can satisfy you, in proof, of the particular *delusion* with which the accused is afflicted;—nor could it have been done in the case of Jensen, had he succeeded in taking the life of his child; but to remove any impressions you may have, that insanity exists only where it is *seen* in a series of acts of violence and raving; and for the purpose of asking you to come to the conclusion, that such a delusion did exist, if we shew you that no motive and no occasion did exist for perpetrating the crime charged.

With the certainty of being tedious to you, gentlemen, I deem it necessary to repeat the substance of all the evi-

dence, as well on the part of the State as of the prisoner. I would not willingly suppress or misstate any portion of it; for while some of the inferences which the counsel for the Government and the accused, and the result of the testimony to which we may ask you to come, may differ widely, I am desirous that you should be satisfied, that the Attorney General and myself do not differ as to what that testimony is.

[As the evidence is published at large, we here omit Mr. Bartlett's recapitulation of it.]

The statement of the solicitor in the opening of this case, and the course of the examination shew us, that from this testimony the Government contend—

- That the deceased came to her death by the prisoner at the bar;
- That he is a person of a vicious and violent temper;
- That for wicked purposes, he induced the deceased, by false pretences, to a place of concealment, where the death was inflicted;
- That at that place, insulting language was used and violence offered; and that he took her life to prevent exposure.

On the part of the prisoner, it is admitted, that the deceased came to her death by his hand.

But the other positions are each and all of them contested. So far from being proved, on the contrary, we contend—

- That the predisposition to Insanity is an hereditary disease, and has existed and been exhibited in his direct ancestors and collateral relatives for several generations;
- That the causes and indications of insanity in the prisoner, were exhibited by diseases of the head even in childhood;
- That instead of being a person of vicious and violent temper, he is proved to have been a lad of peaceable and quiet habits;
- That the professed purpose for which he went to the field on the day of the death, must have been the only purpose contemplated;
- That there is no proof of any other act of violence than the blows that caused the death;

and in conclusion,

- That his previous conduct, the circumstances attend-

ing the transaction and following it—the entire absence of all motive for the deed, and his whole deportment, are decisive evidence of that mental *delusion*, which is already defined to be *insanity*.

The evidence of the conduct of the prisoner in relation to the several other positions, I think may be more justly estimated, by first adverting to the fact of the hereditary nature of Insanity, and the proof of the taint in the blood of the family, as well as its early developement in this individual.

On this subject a distinguished medical author (Burrows on Insanity, p. 100) uses this language:—

“The doctrine of constitutional predisposition to specific diseases being propagated is not new. * * *

“The liability of mania, demency, epilepsy, leprosy, &c. to extend through future generations, is an opinion confirmed by the experience of all ages. * * * The developement of insanity may escape one generation and appear in another; but no wise in this respect obtains. * *

* * It is of little real importance whether it be a *predisposition*, or the *malady* itself, which descends and becomes hereditary; but no fact is more incontestably established, than that insanity is capable of being propagated. * *

* * Hereditary predisposition, therefore, is a prominent cause of mental derangement.”

In support of this truth, I need not advert to the various other authorities which have been read, or to the clear and decisive testimony of the distinguished medical gentlemen who have been before you.

Can it be questioned, that the ancestors and relatives of the prisoner were thus afflicted? The grandfather, Abraham Prescott, lived and died insane. Not only Mr. Blake, Mrs. Poor and others, called on the part of the prisoner, but the witnesses for the Government, Mr. Tuck and Mr. Fellows, establish this fact. The nephew of the prisoner, Marston Prescott, whom the same witnesses knew for thirty years, was, in the language of the same witnesses, during the whole period, “crazy by spells.” Moses Prescott, the son of Marston, it is not disputed is now under guardianship on account of insanity.

The condition of another of the relatives you learn from the testimony of Deacon Abraham Prescott, who states, that his brother’s paroxysms of insanity were such, that he was obliged to be put in confinement. The occasional de-

rangement of Mrs. Blake, the aunt of the prisoner, is unequivocally proved by Mrs. Huntoon and Mrs. Rowe. They state facts in relation to her conduct and deportment—their own conclusions at the time, and the judgment and opinion of others to whom the facts were then known. They were inmates of the family—residents in her house. The Government question the truth of the testimony, as to this individual—not by impeaching our witnesses,—but by calling very respectable gentlemen to testify, that they *did not know* the facts thus sworn to. From the books, which we have cited, as well as from the witnesses of most experience, you have learnt, how universally true it is, that the existence of this malady in a family is attempted to be concealed. You have heard the cases stated where this propensity was so strong, that even the lives of friends have been put in jeopardy, rather than disclose the truth, even to the medical attendant. Surely then, we need not be surprised, that Mr. Sandborn or Mr. Batchelder, who lived in the neighborhood, or Judge Burgin, who lived some miles distant, might not be informed of her situation. Much less, that Mr. Evans should not be informed on the subject, who says he never saw her but once, and that on the occasion of a regimental muster he called at her house, nine miles from the place of his residence. Dr. Pillsbury speaks with great doubt and uncertainty as to the *when, where, or what* his acquaintance was with Mrs. Blake, except on one occasion, she was sick, as he says, of fever, at Deerfield, and then “*was deranged.*”

The insanity of Mrs. Hodgdon, the half sister of the prisoner, we prove by the testimony of his parents. You, no doubt, gentlemen, will be asked to credit with caution, if at all, their testimony in behalf of their son. Their situation is truly a painful one, and we would have avoided calling them, if the principal facts to which their testimony is directed, were not of a character to be within their knowledge only. That they must have strong feelings in this case, it is impossible to deny,—they must be more, or less than human, not to be affected by them. The prisoner is their youngest son—and experience proves, not the less dear to them for the apprehension they have entertained of the existence in him of the malady of the family.—Well may it excuse the afflicted mother’s exclamation before you—“How could Abraham have cruelly killed his best friend on earth, if he had not been crazy?” Poor and uneducated they may be, but no witness has been called to impeach their general reputation for truth.

From these witnesses you also have evidence of the early symptoms of insanity in the prisoner. They state to you what they were—the disease of the head—its unnatural enlargement—excruciating pains—rising in his sleep, &c. That such was the extent of the disease that medical assistance was called for repeatedly. To confirm this Dr. Graves was called, who although he has no recollection of any facts in relation to it, finds on his book charges for attendance and medicines he at divers times of the date stated by the mother and entered as for this child. It is true, the Doctor undertook to add certain conjectures of his own,—which we must beg leave to decline receiving as testimony. If we take his oath and book, so far as they support each other, it is all that, in conscience, can be asked of us.

Mr. Knox testifies, that on some occasion he heard Mr. Prescott say, there had been none of his family crazy.—Of this, there need be no doubt. Take the well established fact—that in all classes, there is an unremitting effort to conceal the existence of such a malady, and add to that the vulgar idea that it is an imputation of *reproach*,—and we need not be surprised at proof of denials. It is also proved by Mr. Cochran, that after the sixth of January, the father and mother both said they had never before known him to walk in his sleep. The circumstances under which this was said may not excuse, but may perhaps account for the error of this statement. The lives of Mr. and Mrs. Cochran had been put in imminent hazard, by the act of Abraham, supposed to have been done in his sleep. The parents could not but have felt themselves censured, for not having put them on their guard, by communicating the fact, in relation to his habit, and they might—they did improperly—deny it.

The Government has called before you many of the neighbors and acquaintances of this young man to testify, that he has to them appeared to conduct with ordinary intelligence, and, that, before, or since the horrid scenes of the winter and spring of 1833, they have discovered no evidence of derangement. All this disproves nothing, that we attempt to maintain—that the act itself was the result of the inherent malady. Most of the numerous cases to which we have adverted—and which the learned gentlemen of the faculty have stated to you of unquestioned insanity, could have been met with the same proof, independent of the act itself, which established the fact of the existence of

the disease. The same witnesses have stated, that they discover no change in the appearance of his eye and countenance at this time from what it usually has been, while Dr. Cutter, who for sixteen years has given his whole attention to the examination and study of the characteristics of this disease, as exhibited in numerous patients constantly under his care, states that his appearance and manner, and particularly his eye, exhibit decisive indications of an unsound mind. He has stated to you some of those indications.—And you are well aware, that subtle and difficult of detection, as are the signs of this malady, to the skilful and experienced its indications may be manifest, where no proofs would be discernable by ordinary observers.

The reverse of the position, that the prisoner has been of a vicious and violent temper, has been most triumphantly established, by the witnesses of the Government, and we had no need to add to their testimony in his behalf. Scrutinize the life of any lad, from infancy to the age of seventeen,—bring into court proof of every act and every expression of passion, or of playfulness, and let them be related by witnesses, who have the fact established in their own minds, that he is a *murderer*,—and who shall pass such an ordeal, with the impunity of this young man? Improper *language* may be used—that indicates the character of the education, or rather want of it. The *acts* may shew the temper of the party.

The good old Mrs. Critchett, whom you have seen here, very naturally concludes, seeing that boy now, in her mind at least, is a murderer, when a mere babe was “very passionate”—at five years old, had “a dreadful temper”—Said divers bad things. How much this all rests in the poor old lady’s imagination, you must judge when she informs you, that in all his daily intercourse with her own and the neighbors’ children, she never heard of quarrel, or a complaint of any difficulty. But Mr. Francis Bickford comes to the proof of an *overt act*—not of treason, but of a murderous disposition,—that when Abraham was between five and six years old, he threatened to whip him, and the boy threw an axe towards him. And is the Government driven to the proof of such instances of provoked petulance in childhood for evidence of a murderous disposition? Take the testimony of Mr. Johnson, who knew him, as a school boy; of Mr. Kimball, with whom he lived near two years; of Mr. Cochran, with whom he had lived three years; of Judge Burgin, who had known him from a

child;—they swear, that in all their acquaintance, they know not a single act of bad temper.

I do not forget the statement of Mr. Cochran, of the case of cruelty to his oxen. Precisely the evidence, not of general bad temper, but in exception from his general character, of the existence of the malady, with which we say he is afflicted,—as testified by Drs. Wyman and Parkman in the case of Mr. Floyd at Roxbury. Had he possessed a bad temper, could he have lived there years in the family of Mr. Cochran, and in no instance have given any indication of it, either to the parents or children? Yet the bereaved husband of the deceased very candidly tells you, he never knew an instance of harshness—of unkindness—of ill temper toward any of his household, or any one else.

From what proof are you to be asked to infer, that the prisoner left the house on the 23d of June with any other purpose, than that stated at the time? It cannot, for a moment, be supposed, that any other purpose could have been suspected by Mrs. Cochran. Such injustice cannot be done to the memory of her whom all admit to have been a most amiable and exemplary woman.

The whole proof, on this point, rests in the attempt to show, that they went out of the course for gathering strawberries,—and into a place of concealment. Gentlemen, more—much more of imagination is necessary to be brought in aid of the proof here than it is safe to trust to, in the investigation of such a charge. What are the facts? To have returned from the field into which they first went, by the way they went to it, they must have passed two fences;—by crossing the fence where they did, they came into their own enclosure, in which a path led directly to the house. Many witnesses have been enquired of, if there were strawberries at the place where the death happened. Some have expressed an opinion, that it was not the best place for them, but they all admit, that some grew there. The place was lower than the field where they first entered. It is stated to have been toward the close of the season for strawberries, and you will judge whether it was not natural to seek them in the lower ground. On this point, you have the testimony of Miss Belinda Robinson, a young lady whose candor and intelligence cannot fail to have given her statements weight with you; and she says, that the year before, in going out for strawberries, she sought for and found them there, and knows it was a place resorted to for the purpose.

But how can it be made a place of concealment? You have heard much of the wood that was near. And yet the same witnesses say it was but seventy rods from the house,—and in one direction at least, in plain view for eighty rods—and strawberry fields in June, even on a Sabbath, are not the most solitary places, any where in the country. Mrs. Lucy Robinson, when inquired of, said she had often passed there, and it had never had occurred to her that it was a retired, or lonely place. But if we were allowed to go into conjecture upon this subject, how entirely is the supposition of any improper purpose overthrown, by the circumstances of the transaction and the relation in which the parties stood. He goes at her request to ask the husband, then at home, to go out with her. Did he foreknow that the husband would decline? When did his wicked purpose first suggest itself to him? For three years, he had resided in the family. For days and nights, had frequent charge of the house, in the absence of Cochran, and in all this time, and all these occasions had a rude word been uttered?—had a rude thought even been suggested to that virtuous female? Most certainly not. His deportment toward her was with the most respectful deference. Did he then, at mid-day, in the open field,—almost in the face of her husband, offer an insult to her? If so, then who can say he had one trace of *sanity* left? What more conclusive proof of actual *madness* could be adduced?

However, it is further contended, that whatever may have been the purpose of going out, while there, insult was offered to the deceased, by the prisoner, and violence used;—and that he afterwards took her life, to prevent complaint from being made.

The only evidence in support of this position, independent of the prisoner's conversations, which stand by themselves, is in the situation and appearance of the body of the deceased, and of the ground, where the death was inflicted. And do you find *there* evidence upon which you can rest and say such facts existed? If the proof were decisive and clear, that the grass had been trodden in an unusual manner, it would not of itself be evidence, as the witnesses express it, of a *scuffle*;—that could not have happened without other and more conclusive proofs. They would be found in the discomposure of the dress—in marks upon the hands,—arms or body. But the weight of evidence is not that there was any extraordinary appearance in relation to the treading down of the grass. The testi-

timony of the Government witnesses varies, on this subject, according to the vividness of the fancy of the individuals, by representing the track of all extents, from three, or four feet, to seven or eight in width. But those of the witnesses for the Government, who were first at the spot, who seem to have acted on the agitating occasion with most self possession, and who are not surpassed by any, in the candor and clearness of their statements, or apparent fairness of intention, Mr. and Mrs. Robinson and their family, distinctly swear, that the grass was no more trodden, than the act of killing and taking away the body would naturally have occasioned. That there was nothing in the appearance of the place to excite a suspicion, that there had been any contest, or scuffle. And as to any other proofs—by marks upon the deceased, or by the condition of her dress, the Government not only do not produce any,—but, on the contrary, their witnesses swear, that examination was made—the attention particularly directed to that inquiry, and no pretence for such a belief was found.

But the calash and comb were found at the place where the blows were given. And what is the inference? Do the Government ask you to believe they were removed before the blows were given—and by whom? If by the prisoner—after that was done, did the deceased remain in the same place and make no attempt to depart, while the prisoner went to arm himself with the stake? Did the prisoner commence *such* a contest, already armed with the deadly club? Remember the blows were given upon the *back of the head*. If any previous violence had been indicated, did the deceased so *disregard* it as to give an opportunity for such an attack upon her? Any hypothesis upon the idea of other violence, or even of insulting language, previous to the blows upon the head, is most preposterous and absurd.

There can be no doubt, that the comb placed high upon the head, as such combs are worn, might with the calash be removed, stooping forward as the deceased probably was, by the blows which were inflicted, and by her immediate fall upon her face, without its being more broken than it is represented to be, as the blows were below where it would have been placed.

But the prisoner's confessions are in the case. There is something that shocks us in the very thought, that an act, which in all its circumstances is stamped with the evidence of insanity, is to be proved a crime by the declarations of the deranged person himself. And, especially, when the manner in which those declarations were made, as well as the declarations themselves, exhibit all the characteristics of a disordered intellect.

Look at the circumstances under which those declarations were made—and the declarations themselves. After several months' imprisonment on the charge of murder, he was brought to this place, during the sitting of the court, to be put to his trial upon the Indictment for his life. The testimony of the Warden is, that he was much annoyed by visitors, and to their numerous interrogatories, his desire seemed to be, to give such answers as they seemed to desire. Mr. Thompson says, the prisoner was urged to give his motives for the act. Another person with himself, Stinson and Fowler, were in the cell,—he desired this other person to be removed and would tell—and proceeded to tell in presence of the three persons named, that he made an insolent proposal to the deceased—that she replied by some remark—said she would inform Mr. Cochran—took no further notice of what had been said, and continued picking strawberries. That he thought he must go to the State Prison—and took the stake and killed her. On being urged for his motive for the attack upon both, on the sixth of January,—he stated, that Mrs. Cochran had offended him by her remarks in relation to his wearing out his clothes. So much of this, as relates to the scene of the twenty third of June was recollected and stated by Mr. Fowler. If he had assigned a sufficient motive for the deed, would it have been high evidence of *sanity*, to have made the confession in presence of three witnesses, on the day before he expected to be put on trial for the offence! And when you look at the declarations made by him, you are to take them as they are. You are not by your conjectures, or suppositions to add to—or to alter them—to make them either more rational—or more sufficient for the occasion. If then he in truth made the insulting proposition, suggested to the deceased at the time and place stated,—under all the circumstances of his residence in the family,—what is the instantaneous answer of every one as to the condition of his mind? It is “he is crazy.” If the insult was offered—and was answered as is stated—and upon that inducement and motive, he proceeded to take the life of the deceased—is it an inducement, or motive for any other than a *maniac*?

I am aware of the undue importance attached to the word *confession*—however irrational, inconsistent, even absurd in itself—or under whatever state of mind it may be obtained.—“Why confess if not guilty?” Why a deranged intellect should, or should not do, or say, whatever is most strange, or unreal, no *rational* mind will attempt an answer. The history of criminal trials shews us, however, that confessions even under other circumstances, are not conclusive proof of guilt. The

case of the Bournes in a neighboring state, who procured themselves to be sentenced to death upon confession of murdering a person, who appeared alive to resist the execution, has been often adverted to. In the volume I hold in my hand, (Up-ham's account of the Salem Witchcraft) I find the following remarkable statement. Speaking of the convictions for that offence, the writer says—"But there is one species of evidence, which renders all the rest unnecessary, and overwhelms the minds of the court, the jury and the public, and perhaps, in many instances, the unhappy prisoners themselves with conviction. The confessions. Fifty-five persons, many of them previously of the most unquestionable character for intelligence, virtue and piety, acknowledged the truth of the charges that were made against them;—confessed that they were witches, and had made a compact with the devil." "The records of their confessions have been preserved. They relate the particulars of the interviews they had with the evil one." I cannot imagine, that any one of those fifty confessions contained more of extravagance and improbability, than that which is here introduced as evidence.

Gentlemen, we have thus far considered this case without adverting to some of the circumstances, which, if doubts might remain upon the other evidence, are irresistible proofs of the insanity of the accused. They are those to which we have before proposed, in conclusion, to direct your attention;—his previous conduct;—the circumstances attending and following the scene of the fatal twenty-third of June; and the entire absence of any sufficient motive for the horrid deed of that day.

If the Government, in the absence of all proof upon the subject, could have asked you to presume from the act itself a wicked motive, their testimony, now before you, rebuts all such presumption,—removes all such pretence. We ask for no clearer testimony, in this respect, for the prisoner, or from a source more entitled to credit, than that of Mr. Cochran, the husband of the deceased. He testifies, that he not only knows of no motive for the act, but he states, that his uniformly kind treatment of all the family,—his invariably respectful deportment,—his exemplary conduct and fidelity, and the mutual confidence all of them reposed in each other, were such as takes away all pretence for conjecture upon this point. Was he under bonds to remain, and did he wish to escape? His residence was voluntary and for a satisfactory compensation. Was he reluctant to labor,—and were too severe tasks imposed upon him? He required no urging to his duty, and always cheerfully volunteered to do labor, that was not required from him.

What but the most unparalleled course of good conduct in the prisoner could have secured such undisguised friendship of the family as was exhibited by them, after the tragical scene of the night of the sixth of January? While the husband and wife lay bruised and bleeding under the blows he had inflicted;—while their lives were spared from his deadly attack, in the silence of midnight, apparently by miracle;—did they not, in their long suffering and confinement with the wounds, review every act and every expression,—and every look even, of his, while in their service, to find any cause of doubt, or suspicion of the sincerity of his apparent friendship for them? Most surely they did;—and so entirely did they acquit him of all fault, that it was painful to them to hear even a doubt of his innocence expressed.

Here, Gentlemen, I ask your attention to the transaction of the night of the sixth of January. I hold, that the prisoner is alike innocent, or guilty of any criminal act in that and the bloody scene of the twenty-third of June. If he committed *one* murder on that day, he attempted *two* murders on the night of the sixth of January.

If he did not attempt to take the life of Cochran and his wife on that night in a paroxysm of delirium, whether called somnambulism or insanity is immaterial—then with some motive he attempted to murder both. If it is admitted that he then was irresponsible for the act from any cause, it is preposterous—absurd to look for any new cause for the deed of the twenty-third of June. I stand here upon this position. I call upon you to reflect and to examine, if it be not a sound one. I call upon the Government to satisfy you, that the assault of the sixth of January was an attempt by the prisoner, in *sane mind*, conscious of the act at the time, with malice aforethought to kill the persons he then assaulted;—or to yield the point, that then, whether sleeping or waking, he was in a state of *mental derangement*.

So far as the motives of the prisoner, or his state of mind are in question, the transactions of these different dates must be considered as one and the same. Pardon me, gentlemen, if I weary you with repetition, I will not say with “vain repetition,”—for so important does this view of the case appear to me, that, unless you find evidence to justify you in convicting the prisoner of an assault with an attempt to murder both the husband and wife on the night of the sixth of January, you would do an outrage to sense and reason in finding him guilty upon the present charge.

Let us inquire then into the character of the former transaction. Its particulars have been related to you by the witnesses. While there was no known cause for the act, you have seen him in the silent watches of the night, rising from his own bed, arming himself with the most deadly weapon, an axe, proceeding to the apartment of his most esteemed friends and protectors, and while they were reposing in their slumbers, he commences the work of butchery by inflicting blows with the axe indiscriminately upon their heads. The effort apparently brings to him a consciousness of what he has done and is doing. In an agony of distress, he alarms the mother of the victims—flies to the neighbors and calls them to their relief—relating all of the transactions of which he is conscious, or which he infers from his own situation and that of the wounded parties. His unremitting attention to them, while under the care of the surgeon;—his anxiety, till they were pronounced out of danger from the wounds;—his distress when the subject was adverted to;—all have been proved. Was he previously nurturing in his bosom the dark design of murder? Was he with fiendlike malignity, on that night, executing the demoniac purpose?—and was his apparent affection and kindness all hypocrisy?—and has his whole appearance before you been mere *acting*? Then the history of the drama—the history of the world has not upon its records the name of an individual of such extraordinary power. In the absence of all proof of inducement, motive, or object for the bloody deed, if you were at liberty to indulge in conjecture, what could it supply you? If from any motive, murder was the purpose, why was not the crime consummated? Perhaps he thought it was. Why then did he not retire again to his bed—and leave the whole world open to the suspicion of the guilt, while he would have been the last upon whom it would have rested?

Veteran offenders, long schooled in vice and crime, have been found sufficiently hardened to commit *one* murder under strong temptation, from mercenary motives. But when has a youth in the innocence of boyhood, educated in the schools of New England, and the religious and moral discipline of families like those of Mr. Kimball and Mr. Cochran, with the still higher moral influence of associations connected with God's works, as exhibited in the moral scenery of the country, free from the vices and contaminations of men congregated in cities—when, I say, has such a youth been found to change at once, as it were, his whole nature from habits of quiet, honest industry, to the commission, for the *first* offence, of the *last* and blackest on the catalogue of crimes! If he supposed that

they had money, or treasures, that he could obtain, when the husband and wife were murdered, his work was but partially done. The mother too must have come within his bloody purpose. You have heard that part of his confession, which assigns the motive for the transactions of that night—"that Mrs. Cochran had offended him by speaking to him concerning his clothes." *That* a motive for murdering Mrs. Cochran!—for murdering Mrs. Cochran and her husband too! If the assignment of such a motive does not prove a deranged intellect, it surely proves the existence of *that* malady in him, who could for a moment listen to it, as a motive for such an act.

There has been manifested, not only elsewhere, but *here* on this trial, a strong propensity to encourage the belief, that the prisoner indulged a lawless and wicked attachment to the deceased, and the inquiry will present itself to you, whether such a conjecture finds any confirmation in that tragic scene.

Had such a thought ever been suggested to the deceased? Never! Never! If her pure spirit could now revisit us to declare his innocence, it could not declare it in clearer terms, than was her declaration to Mrs. Robinson, after the transaction of the sixth of January. "Abraham ought not to be blamed," said she, "he would have hurt himself as soon as he would us, if he had known what he was doing."

The miserable, degrading conjecture, then, has no foundation but in the depraved minds that first started it. It may be said, if the purpose had never been indulged, the design might still be entertained. And was the murder of the object of his wicked desire the way to its accomplishment? Perhaps the death of the husband only was intended, and the blows, by accident, fell upon her. Then you must find him seeking to commend himself to her affections—to share with her the pillow, steeped by his own hand in the lifeblood of her devoted husband—the fond father of her lovely children! What maniacs would such conjectures make of us! Gentlemen, I will not for a moment suppose that you, *in your senses* can believe the prisoner to have been in his right mind on that night. It is no matter what name is given to the malady with which he is afflicted, whether called somnambulism, monomania, lunacy or insanity, there is no doubt that he ought then to have been put in some place of security, not for any offence he had committed, but for the safety of community; and then the melancholy event which we now deplore, would not have happened. That he was not so secured can only be attributed to the general want of information as to the dangerous nature of the disease.

What saved him then from a trial, and conviction, perhaps, but the fact, that the persons who were assaulted survived to declare his innocence? What now has put his life in jeopardy, but the fact, that the same malady exhibited in the same form has deprived him of the testimony of her, who, could her voice be heard, would again declare to you, that "he was unconscious of what he did."

Is there a single indication of guilt in the conduct of the prisoner, relating to the whole transaction of the 23d of June, that did not attend that of the 6th of January? He dragged the body of the deceased from the place where she was killed,—but for what purpose? Was it for concealment? The calash and comb were left to mark the spot where the fatal blows were given, and he by the act of removal covers himself with blood—goes directly to the immediate neighborhood of the house—purposely calls the attention of her husband—stands before him in his bloodstained garments—proclaims what he has done, and point out to him the fatal spot. While the alarm is given to the neighbors, and they assemble, he remains near the place; he remains near the place, making no attempt at concealment or escape. His situation and his story is told to you by Mr. Abbot. He found him lying upon the ground, upon his face—he said he had killed Sally—that he had the tooth ache very bad—sat down upon a root, supposed he fell asleep and killed her. He had then taken off his shirt to hang himself. He described the place where he sat, so that the witness knew it.

Take in connexion with this the fact, the fact that the report of Avery's trial was in the family, and had, no doubt, been the subject of conversation; a circumstance, as the medical gentlemen tell you, to excite the morbid delusion of an insane mind to acts of violence, and the prisoner's statement of the tooth ache, which he has uniformly related, and which he could never imagine would have any connexion with his guilt or innocence, yet the same testimony assures you, that it is a strong proof of that nervous affection which constitutes or occasions the disease, and is often a prelude to it. It may be said to be incredible that he should have instantly fallen asleep. Such an instance is not without numerous cases as precedents, but it is immaterial what he has called that state of mind which was the sleep of reason—or the reign of that *delusion* which left him no control of himself. If he were conscious what he did, when he did it,—so was the mother, who attempted to snatch her babe from her breast and destroy it in the fire, when she requested her friends to prevent her by force;—so was

Hadfield, when he fired upon the king ;—so was Miss Corner, when she took the life of an unoffending child—and threw the severed head among the crowd assembled at the door, that they might know, as she said, that she had done it. Yet humanity exults, that the high and intelligent tribunal before which they were arraigned, have pronounced judgments of acquittal. Mr. Abbot further states, that the prisoner not only made no attempt to escape, but, that having charge of him, he observed, that he *slept* through the night. Was that deed perpetrated in *sane mind*, and could a lad of seventeen, with the crime of murder upon his soul, with his hands stained with the life-blood of an amiable female, in the morning of life,—a wife and a mother—could he have laid down and have *slept*? No! had he been educated for Tyburn in the school of highway robbers, or pirates—had he grown grey in the perpetration of deeds of death, the could not in *sane mind* have committed that murder, and have driven from his mind, that night, the spectre of the mangled corpse—the weeping relatives—the bereaved husband—the motherless children—the mournful desolation of that house which was *his home*—and have *slept*!

Any attempt to raise unfavorable inferences against the prisoner from his conduct, while in jail is attended with signal failure, when the testimony of such a witness as Blaisdell is followed by the highly favorable character so intelligibly given of him by Mrs. Leach.

When you shall have considered all the circumstances of this extraordinary transaction, can you do otherwise than say, that it is “an act of atrocity contrary to human nature, against the character of the individual, committed without motive, and of itself evidence of *insanity*.”

Isolated acts of mental derangement, amidst a life apparently rational and regular, may not be familiar to us all, but the cases that have been read to you, and that have been stated by the learned witnesses, who have been examined, shew, that such instances are by no means uncommon. *They do happen*, but did it ever happen, that a person in *sane mind*, wilfully murdered his best friend without any motive, real or imaginary? If you were then allowed to rest your verdict upon probabilities merely, an acquittal is justified upon the act itself.

Judges as you are, gentlemen, of the law and the fact, I have felt it my duty to make to you the general remarks which have been submitted in relation to your *right* to inflict capital punishment ;—or the right of the Legislature to confer that power upon you. I have adverted to the evils, rather than salutary influences which attend its infliction, that you might not

lean to a conviction from a belief that the public good required a sacrifice. The irremediable nature of any error in your judgment against the prisoner, has been suggested, that you might use the more caution—require the more certainty, while feeling “the danger of using this attribute of divine power without the infallibility that can alone properly direct it.” That most mysterious subject, the *human mind*, and the diseases that disturb and derange its operations, could be illustrated only by its history, as recorded by medical authors, or established by the experience of the learned and scientific of the medical faculty. Such aid as these means have afforded, we have endeavored to give you. The evidence of the hereditary predisposition to insanity in the family of the prisoner,—the indications of the malady in himself in early childhood—his peaceful character—his exemplary life—the tragic scene of the night of the 6th of January—his conduct then—as on the day of the death of the deceased, and following it, with the considerations in relation to any motive for the crime, or the entire absence of all motive—are now before you. Your verdict of acquittal is now to leave him secured, as the law provides, from hereafter doing harm, by imprisonment,—or your verdict of guilty seals at once his condition for time—for eternity.

In your deliberations, do not loose sight of that principle, which cannot be too often urged, that if you *doubt* as to guilt, you are bound to acquit. If the evidence preponderate against the prisoner,—yes, even if the balance were greatly against him, yet if a reasonable doubt rest upon your minds—the law says that doubt shall discharge him. A writer upon this subject (McNally) says—“Sir Edward Coke, in favor of life, exhorts juries not to give their verdict against a prisoner without plain, direct and manifest proof of his guilt.” * * * * *

“Their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves, whether they are satisfied, beyond the probability of doubt, that he is guilty of the charge alleged against him; * * * “and however strongly you may suspect the prisoner, yet it were better that one hundred guilty persons should escape, than make a precedent, by which one innocent man might be found guilty upon such testimony.”

I am well aware of the power and eloquence with which the conviction of the prisoner will be urged on the part of the Government. You may be told, that, if he escapes the sentence of the law for murder, the commission of the crime may be encouraged, and the blood of future victims will be required at your hands—that perhaps your own children, your own wives, may be sacrificed to your lenity. Gentlemen, let no such appeals stir you to injustice—cruelty—to conviction,

without proof and against proof. If you have relatives, friends, whom you would protect from the violence of the assassin, you too are friends, husbands, fathers to those, upon whom, in the Providence of God, the calamity which now afflicts this young man, may fall. While every grade of *mind* from the humblest reasoning faculty to the loftiest power of human intellect has been subject to the paralyzing influence of this malady; while its unseen and noiseless approach is unknown till marked by the ruins it has left—who can feel assurance, that within the hour he may not be its victim? And while the thousand new forms and modes in which its effects are exhibited are now daily baffling “the wisdom of the wisest”—who is there may not fear, that to such a calamitous visitation of heaven, erring mortals may add the infamy of a public execution upon the gallows.

Gentlemen, I here leave the prisoner and his fate with you. May you render a verdict upon which you may hereafter reflect with satisfaction—a verdict which shall not disturb, with misgivings and regrets, the remainder of life,—which shall not enhance the dread of death, or the awful solemnity of that scene where we all must soon appear before our final Judge.

The Court adjourned to half past 2 o'clock, P. M.

Met according to adjournment.

The Attorney General, Mr. SULLIVAN, addressed the jury as follows:

*May it please your honors,
and you, Gentlemen of the Jury.*

This prosecution is deeply interesting to the public as well as the prisoner at the Bar. I agree with the counsel on the other side, that in the decision of it no reports, whether in favor of the accused or against him, should have the least weight in your minds: and that your verdict should be formed from the evidence produced on the trial. It is your duty to examine the evidence with the most critical and anxious attention; lest, on the one hand, an innocent man should be consigned to the grave loaded with disgrace and infamy; or, on the other, lest one of the worst of murderers should go unpunished.

Before I make any remarks upon the evidence, it will be necessary for me to examine one or two questions, which have been raised and pressed upon your attention.

It has been urged by the counsel for the prisoner, that no human government has a right to inflict on a criminal the punishment of death; and much ingenuity has been displayed in attempting to establish the truth of this position.

Although it is not your province, Gentlemen, to decide this ques-

tion, yet the course that has been pursued renders it necessary for me to make some remarks in relation to it; because, if you doubt the right of the Legislature to inflict the punishment of death, you may be led to acquit the prisoner, even if the evidence of his guilt is clear and satisfactory.

It is asserted by some that this mode of punishment is both unjust and inexpedient; that it would not be tolerated, were it not for its antiquity, by any free and enlightened people. That it is an error in criminal jurisprudence; and that, like other errors, which have been transmitted from distant times and have grown "heavy with age," it should be, at once, exploded.

It will scarcely be pretended, that a blind and unreflecting veneration for antiquity is a characteristic of the age in which we live. We are far more inclined to innovate, than to acquiesce in the opinions of those, who have gone before us. Laws, which have been approved by men of the strongest and most powerful minds, and the utility of which has been demonstrated by the experience of ages, have, sometimes, been condemned as injurious: as relics of ancient barbarism. Many seem to imagine that the very antiquity of an opinion should lead us to suspect its truth.— But to reject an opinion, because it has been long received; or to condemn a law merely because it is ancient, discovers very little either of reflection or of practical wisdom. Shall the trial by Jury, that best safeguard of our property, our reputation, our liberties, and our lives be abolished, because it has existed for centuries? If antiquity has sometimes led us to adopt erroneous opinions; these are few and inconsiderable, compared with the many salutary and invaluable lessons, which its wisdom has taught us.

It is difficult for us to examine the position, laid down by the counsel for the prisoner, with unprejudiced minds. When we find that the punishment of death is frequently inflicted, by other governments, on those, who are guilty of very trifling offences, we sympathize with the sufferers; we regard the punishment as unjustifiably severe; and condemn the law that imposes it. With feelings thus excited, we are easily persuaded that the punishment of death can, in no case, be justly inflicted.

But, in truth, the arguments, which are urged to prove that government has no right to inflict the punishment of death, are entitled to very little weight: they are rather specious than solid. The principal argument is the following: that government can possess no rights but those that are conferred upon it by its subjects; that a man has no right to take his own life; and, of course, that he cannot transfer that right to the government.

If a murder is committed, shall the offender go unpunished? It is answered, no! let him be imprisoned during his life: that in this situation he can do no further mischief; that society will be safe.

It will be, at once, perceived by you, Gentlemen, that the same

mode of reasoning, by which it is attempted to be proved, that government cannot punish a criminal by death, will equally prove that it cannot punish him by imprisonment for life. It might be said that a man has no right to cut himself off from society; to shut himself up in a prison; and make himself a subject of punishment during his life; that if he has not this right, he cannot transfer it to government; that government, therefore, does not possess this right. It is apparent that by the law of nature man is bound to seek not only his preservation, but his happiness; to secure not only his being, but his well being. To destroy his own happiness by shutting himself up in a prison and punishing himself during life, would be as truly a violation of the duty imposed on him by his Creator, as to put an end to his existence.—By pursuing the mode of reasoning, which has been adopted to show that government has no right to inflict the punishment of death, it might be proved, with equal plausibility, that it has no right to inflict any punishment whatever.

It is unquestionably true that there are certain rights, which are justly claimed and justly exercised by every government and which belong to it, not by virtue of any particular compact, transferring those rights, but from the very nature and necessity of government.

Few arguments will be necessary to convince you gentlemen, that the allwise and benevolent Creator of man intended that he should live in a state of society. Besides a sense of weakness and a desire of personal security, which urge him to enter into the social state; there is implanted in him an instinctive love of society, which constantly allures him to it. Without society the best and noblest powers bestowed by God on man would have been almost entirely useless. In a state of solitary and savage independence the various faculties of the human mind could never have been developed: the amiable and benevolent affections of the heart could never have been called into exercise. It may, then, be safely affirmed, that the existence of society, which is essential to human happiness, was designed by that Being, whose goodness is infinite.

It is equally certain that the Creator of man intended, that he should live under a government of some sort; since, without government, society cannot exist.

The right of self-preservation belongs to every society and to every government, as well as to every individual; not from any compact transferring that right, but from the very nature of these institutions—from the necessity of uniting in society and of living under some form of government to prevent its dissolution.

If a number of individuals rebel against the government, that protects them; if they endeavor to overturn it; may not the government employ force against them? May it not destroy the lives of the rebels? No one, who reflects on the subject, can doubt it. Government derives the right of taking the lives of its

rebellious subjects from the principle of self-preservation and from the necessity of protecting that society, of which it is constituted the guardian. Without this right no government can stand; whatever may be its form, it must necessarily fall, and society must fall with it.

It may be regarded as a political axiom, that the very existence of every lawful government implies a right on the part of that government, to do every act necessary, not only for its own preservation, but for the preservation of the society whose interests are entrusted to its care. As he, who commits murder or treason may be justly considered as a public enemy—doing such deeds of wickedness as tend to the overthrow of the government and the dissolution of society—his life may be rightfully taken by the government, both from the necessity of preserving itself, and that of guarding the public safety.

It has been said, that imprisonment for life would prevent the commission of dangerous and aggravated crimes as effectually as the death of the offender. This is wholly incorrect; it would not operate with equal power to prevent the perpetration of the first crime that condemns the criminal to prison for life; and it is perfectly clear, that it would not have the least tendency to prevent the commission of subsequent crimes, however atrocious they might be. It would place the murderer in a situation to repeat his murders with impunity. If a murderer is committed to the State Prison for life, what assurance can there be that he will not destroy the lives of his fellow prisoners? What will restrain him? Will the principles of religion or morality do it? His past conduct shows that no religious or moral principles have the least influence over him. Will the feelings of humanity prevent? The barbarous crime he has committed clearly proves that such feelings are strangers to his heart. Will the fear of punishment from any human tribunal deter him? He has, on the principle contended for, received the highest punishment that any human government has a right to inflict. If a man perpetrate murder, when all the terrors of imprisonment for life are before his eyes, will he forbear to perpetrate it, when no punishment can be inflicted on him, if he does? The voice of reason and of justice as well as the feelings of humanity forbid that government should send a murderer among the convicts in the state prison—prepared, as he must be, for the perpetration of the most atrocious crimes—and with a perfect knowledge that he can receive no further punishment whatever murders he may commit. Government has no more right to send among them such a hardened and dangerous offender, than to let loose upon them the most ferocious and destructive animal. The convicts in the State Prison are under the protection of government as much as others; and their lives ought not to be at the mercy of one, who can receive no punishment, if he destroys them.

It may be said that the murderer may be confined during his

life in a cell, so that none may be injured by his violence. They, who are led by their humanity to desire that the punishment of death may be abolished, would do well to consider, whether this would not rather increase than diminish the amount of human suffering. Would not he, who suffers the momentary pangs of death, endure far less than he, who is compelled to drag out years of wretchedness in the cell of a prison?

Let it not be supposed, because there is more of suffering during a protracted life in the cell of a prison than in the pains of death, that such lengthened suffering would have more power to prevent the commission of murder than ever death itself; it would have less, because it is far less dreaded. It is scarcely possible for the most hardened offender to think seriously of dying without being filled with terror. It is not the agonies of death that he so greatly fears, but it is the awful retribution beyond the grave. If this period of retribution is closely connected in the mind of every individual with the commission of murder; if he knows it must soon follow the atrocious deed, he will be deterred from the perpetration of it far more effectually than by any apprehension of being confined for life in the cell of a prison.

It has been said that the life of the murderer should be spared that he may have an opportunity of repenting of his crimes.

Does experience prove that confinement in the State Prison will lead men to reflect on their crimes and to repent of them?—It shows very clearly that the State prison is not the place in which the vicious are reclaimed; that its tenants, instead of repenting, become more hardened in wickedness. Real penitence necessarily leads to a reformation of the life. But of those who have been committed to the State prison, how small is the number whose lives have been reformed? Instances have frequently occurred in which individuals who have been confined for years in the State prison, upon being discharged have been guilty of new crimes, and have again been committed. He, who is confined to prison for life, like most others who expect to die a natural death, will postpone repentance to a distant day. He will easily persuade himself, that for such a business the close of life will be the most proper season. By indulging this spirit of procrastination he daily becomes more hardened in sin, and in all probability, at the end of his existence the work of repentance will not even have been commenced. But he, who has been condemned to die, and who knows that in the course of a few days, he must appear at the tribunal of his Creator to receive his sentence for eternity, will be much more likely to reflect deeply and solemnly on the sins of his past life, and to feel the necessity of immediate repentance.

But enlightened as we are, gentlemen, by the word of inspiration, we cannot consider the question that has been raised as a doubtful one. That Being, who has a sovereign right to the lives of all his creatures, has not only permitted, but commanded

that the murderer should be put to death. It is written, "Whoso sheddeth man's blood by man shall his blood be shed." This, it is said, is not a command but a prophecy. By comparing the passage cited with other parts of scripture, it will, at once, be seen, that it is a command. God said to the Israelites, "Ye shall take no satisfaction for the life of a murderer, but he shall surely be put to death." Is this too a prophecy? Did the Israelites so consider it? They regarded it as a command; and in no instance did they depart from it. The reason of this command is clearly explained to them in the following words; "for blood defileth the land; and the land cannot be cleansed of the blood that is shed therein but by the blood of him that shed it."

The temples and altars, erected to the gods of the Heathen, were anciently a sanctuary—a protection to those who committed wilful murder. But no temple—no altar—dedicated to the only living and true God, afforded any protection to him, who was guilty of this detestable crime. Sacred as the temple and the altar unquestionably were, the murderer was dragged from them and put to death.

But, gentlemen, it is further urged that if the punishment of death could be rightfully inflicted, in any case, the exercise of that right would be inexpedient.

Whether it is expedient or inexpedient to establish a particular law, it belongs to the legislature and not to a Jury, to determine.

It has been confidently asserted, that in those countries in which the punishment of death has been abolished, the number of murders has decreased. But has the experiment been fairly made in any country? During the reigns of two of the Sovereigns of Russia, this mode of punishment was prohibited. But it should be remembered that while it was abolished in name, it existed in fact. It is well known that, during this nominal abolition, thousands of criminals perished under the punishment of the knout or in the mines of Siberia. Every Russian subject knew as well that he must suffer the loss of life, if he committed an aggravated crime, as if the punishment of death had been expressly denounced against it. That this was a fair experiment will scarcely be pretended.

In the year 1786, the Duke of Tuscany issued an edict abolishing the punishment of death throughout his dominions. In the course of a few years afterward the arms of France suspended the operation of the law; and it is uncertain whether it has, at any time since, been in operation. From an experiment so short, even the friends of that measure will admit that it is impossible to determine whether the law would, in its consequences, have proved beneficial or injurious to that country.

There is a moral distinction in crimes, which should always be marked by a difference in their punishment. To punish those of a higher and those of a lower grade with the same severity,

would be both unjust and impolitic. In the crimes of murder and of highway robbery, for example, there are different degrees of malignity; and every one will perceive that the murderer deserves a severer punishment than the robber. To annex precisely the same punishment to these crimes would be dangerous to society—it would lead inevitably to the destruction of human life.

If the legislature of this State should abolish the penalty of death, so that murder and robbery should receive the same punishment, that is, imprisonment for life; he, who should rob, would always murder the individual robbed; because he would receive no greater punishment in consequence of the murder; and by the commission of it, he would lessen the chances of detection.—But when a severer punishment awaits the robber, if he adds murder to robbery, it will restrain him from the perpetration of it. Such is the conclusion to which reason, unaided by experience, would conduct us: but experience proves this conclusion to be just.

It is remarked by a celebrated writer, that in China, those who add murder to robbery, are punished with more severity than those who do not; and that it is owing to this difference, that although they rob in China, they never murder: that in Russia, on the other hand, where the punishment of murder and robbery is the same, robbers always murder.

It is easy to see that in other cases where murder and other crimes inferior to it in degree receive the same punishment, the same fatal consequence must follow. Where, for example, rape—and rape attended with murder—are punished with equal severity, it is clear that the life of the unfortunate female would always be taken.

It may be said that he, who adds murder to robbery, rape, or other crime that he may commit, should be punished by being confined in a cell for a certain period, in addition to confinement to hard labor for life.

If the confinement in a cell should be for a short period, it would not prevent the offender from committing murder; if it should be for a long period, it will, as I have already attempted to prove, increase instead of lessening the amount of human suffering.

The welfare of the community certainly requires that the punishment of death should be inflicted on the murderer. The government ought not to be solicitous to save from an untimely end the enemies of the public—those who have forfeited their lives by their crimes—while they are regardless of the welfare of every other portion of the community. The care and vigilance of every government should be constantly employed in providing for the safety and in promoting the happiness of the moral and useful part of society. It is, undoubtedly, true, that where there is a great disproportion between a particular crime and the punishment annexed to it, the infliction of the punishment is injurious to

the community. Public sentiment disapproves and condemns it as too severe. The public can never be made to believe that to shoot a swan—to break down the mound of a fish-pond—or to steal goods above the value of twelve pence—are crimes that deserve the punishment of death. In such cases the offenders feel that the penalty of these laws is unjust; they know that the public sympathize with them; and they meet their fate with fortitude. The indignation of the community is excited against these laws, and declares them to be inhuman and oppressive. But when public sentiment approves the penalty of the law, and clearly sees its fitness for the crime, it cannot be inexpedient to inflict that penalty.

That murder should be punished with death seems to be a sentiment inscribed on the human heart. It has been the sentiment of all nations, civilized and savage, in every age, and in every country. The conscience of the murderer himself acknowledges the justice of the punishment: he is self-judged and self-doomed to die. Instances are common in which a man, convicted of murder, persists in asserting his innocence to his latest hour; but no murderer has ever been heard to complain that death is a punishment too severe for the crime of murder.

We come now, gentlemen, to a consideration of the solemn and deeply interesting question, whether the prisoner at the Bar is guilty of the crime with which he is charged.

It must be presumed, it is said, that the prisoner is innocent; and, if he destroyed the life of the deceased, that he did it without malice.

That the law presumes every man, accused of a crime, to be innocent; and that it is the duty of government to remove this presumption before the accused can be convicted, is readily admitted. But when a person is indicted for murder, and the law declares that he shall be presumed to be innocent, the meaning is plainly and obviously this, that he shall be presumed to be innocent of the killing of the deceased; but the authorities, which have been read, are express, that if the fact of killing be proved, the presumption is, that such killing was malicious; and that the circumstances of accident, necessity, or infirmity, must be established by the prisoner.

That the deceased came to her end in consequence of blows that had been given to her by some person cannot be doubted.

Doctor Sargent says, that between 11 and 12 o'clock, on the 23d of June 1833, he saw the body of Mrs. Cochran, and examined the wounds inflicted on her; that she had received three blows on her head, one of which had fractured her skull; and that the blows were the cause of her death.

Dr. Pillsbury says he assisted in examining the wounds on the body of the deceased and has no doubt that she died in consequence of those wounds.

The evidence is, also, perfectly clear that the blows which occasioned the death of Mrs. Cochran were given by the prisoner.

Chauncey Cociran, the husband of the deceased, says that on Sunday, the 23d of June, 1833, about 9 o'clock, the prisoner passed through the room in which he was sitting into a back room where his wife was; he soon came back and told the witness that his wife wanted him to go into the field and pick strawberries.—The witness was reading Avery's trial, and declined going. The prisoner then said that he would go with her; that they would go into James Cochran's pasture. This pasture is in sight of the road and within thirty rods of the house of the witness, and within the same distance of two or three other houses. He says that in about an hour and a half after the prisoner and the deceased had left his house, his mother asked him what noise she heard; he went to the barn and found the prisoner sitting on the sill of a shed, at the further end of the barn. The prisoner said he had struck Sally with a stake, and had killed her; that he had the toothache and sat down by a stump, and knew nothing until he had killed her. The witness asked where she was; the prisoner said down in the Brook-field. They then went to the place where the deceased was killed; the prisoner pointed to the body, which had been dragged behind some bushes.

Here you have the voluntary confession of the prisoner that he took the life of the deceased. But, without this confession, the evidence is too strong to leave even the shadow of a doubt respecting his guilt. The prisoner and the deceased left the house of the witness together; in less than two hours after, she was found dead in consequence of wounds inflicted on her. Who but the prisoner could have inflicted those wounds? It has not been proved—it has not even been intimated—that any other person was with her who could have perpetrated the barbarous deed. The clothes of the prisoner testify against him; they were stained with the blood of the deceased. The prisoner conducted the witness to the place where the murder was committed, and pointed out the spot where the body was concealed. These circumstances prove so conclusively the guilt of the accused, that I shall say nothing, at present, as to the confessions made by him after his confinement in prison.

The principal ground on which the Counsel for the prisoner rest his defence, is, that at the time when he took the life of the deceased, if, in fact, he did take it, he was insane; that he knew not what he did.

If this be true, gentlemen, it would be most inhuman to convict him. But what is the proof of his insanity? The mind is invisible; it is not perceptible by any of our senses. We can never know the state of another's mind but by his words and actions. It is from these alone that we can ever ascertain whether a person is sane or insane. No mark—no symptom of

derangement was discoverable in the prisoner, neither before, or at the time, or after the perpetration of the murder.

It has been urged that a person may become deranged, and the first manifestation of that derangement may be the doing of some act of violence to another ; and that the very doing of the act is proof of the derangement. Surely a single, an insulated act of violence, however outrageous it may be, can never be considered as proof of derangement. If it be, the greater the violence--the more aggravated the circumstances attending it--the stronger is the proof of the fact. The destruction of human life, then, affords perfect evidence of insanity.

We have hitherto believed that to take the life of a human being, without just cause, afforded evidence of great and uncommon depravity of heart, but none of insanity. We have always looked upon the murderer with feelings of abhorrence ; and we have regarded with tenfold abhorrence the child who has imbrued his hands in the blood of his parent. But if the taking of human life is of itself proof of insanity, the murderer and the parricide are lost in the unhappy maniac, and our feelings of abhorrence should give place to those of pity. All considerate and intelligent men have believed, that a person may commit murder, or treason, or any other crime, and still have the possession of his reason.

In determining, when a man destroys the life of another, whether he is sane or insane, by what shall we be guided ?-- Shall we follow the idle theories, the airy speculations of visionary writers, or the plain principles of reason and common sense? We can be at no loss to decide.

The rule suggested by reason and common sense is plain and intelligible ; it cannot mislead us. It is this : If we find that a man converses on all occasions rationally ; that he acts rationally in all things except the commission of the crime with which he is charged, we must consider him as a man of sound mind, and the proper subject of legal punishment. This is the only practical rule: the only rule calculated to secure the safety and welfare of society.

If the killing of another is of itself proof of insanity, without any previous or subsequent act indicating an unsound state of mind, no man could ever be punished for murder. The same evidence that would prove the fact of killing would equally prove the insanity, and of course innocence of the accused.

It is perfectly clear that it can never be determined by a single act whether a man is deranged or not. He may commit murder, or robbery, or any other crime, and still have the possession of his reason. It is only from a series of acts that the

real state of his mind can be ascertained. Dr. Wyman, and Dr. Perry, whose attention and studies for several years past have been particularly directed to this subject, and on whose opinions great reliance should be placed, say that a person may become suddenly deranged, and that such derangement may first discover itself by the commission of some act of violence ; but they further say, that the act of violence will always be followed by other acts clearly showing the insanity of the party. It is not, then, the act of violence alone, but that, connected with other acts which follow, that shows whether the person committing it, is deranged or not. Although insanity may sometimes overspread the mind with a thick cloud and sudden darkness, yet that darkness is never short and momentary in its duration. Allowing the individual affected by it just time enough to destroy the life of a fellow being, or to do some other act of violence, and then passing instantly away ; the darkness often continues through the life of the maniac, and always for several days from the time of its commencement.

Doctor Wyman says the shortest period he ever knew insanity to last was one week.

Doctor Perry says the shortest period he ever knew it to continue was five days.

The physicians testify that insanity commonly comes on gradually : and it appears from their evidence that when it comes suddenly, there is always a period, in which the individuals affected will do such acts as to leave no doubt of his insanity.

If the prisoner was really deranged, and his derangement came on gradually, it would be in the power of his Counsel to prove some acts indicative of his approaching malady before he killed the deceased. But they have not done it. If his derangement was sudden you have a right to require evidence that his conduct showed him to be deranged after the deed was done. Have they proved a single act done, or a single expression used by the prisoner after the murder was committed, that can have the least weight in establishing the fact of his insanity ? I certainly know of none.

Several witnesses have been called on the part of the prisoner, but no one of them tells you that he ever thought him deranged.

Many witnesses have been examined in behalf of Government, who have known the prisoner from his cradle ; some of them have lived in his neighborhood, and have often worked with him ; others have resided in the same family, and they all declare that they never saw any thing in

his conduct which led them to suspect that he was insane.

It is said that Abraham Prescott, the grandfather of the prisoner, was insane ; that insanity is hereditary, ; and that this is a strong circumstance to prove the insanity of the prisoner. The derangement of Abraham Prescott, if it would have the least tendency to prove the derangement of the prisoner, should be established by the clearest, the most unquestionable evidence. It is unreasonable for the prisoner to request you to form the slightest presumption that he was deranged, on the ground of his grandfather's derangement, while he leaves it in perfect uncertainty whether his grandfather was deranged or not.

The witnesses who have been called to prove the derangement of Abraham Prescott have not established the fact.

Hezekiah Blake says he was acquainted with Abraham Prescott, who has been dead forty-five years—he lived within a mile and a half of him—he was deranged. Upon being cross-examined, this witness said that although he saw Prescott often, he never saw him when he was deranged, but he had frequently heard that he was so.

Mary Poor knew Prescott when she was young—lived near him—he was more talkative at sometimes than at others ; she never saw him when he was deranged, but heard his friends say he was.

Jonathan Fellows was acquainted with Abraham Prescott, and lived within a mile and a half of him till he died—he used to see him three or four times a year. It was reported that he was deranged, but he never saw him when he was so.

This evidence is very far from establishing the fact that Abraham Prescott was insane ; it rather proves the reverse. The report that he was insane should have no weight in your minds, because, if this was the fact, it could be proved by some one who actually knew it. The three last witnesses, whose testimony I have briefly stated, lived near to Abraham Prescott and never saw him when he was deranged. Is it not probable, if he had been insane, that some one of these witnesses would have seen him during his insanity ?

But Chase Prescott, a son of Abraham Prescott, testifies positively that his father was insane. He states that he lived with him till he was twenty-two years old, and then left him. That his father was deranged several times while he lived with him. He says he took his father into

the field to cut stalks, in order to divert his mind; but he did not understand the business and cut off the ears with the stalks. This witness is the father of the prisoner.— Besides this circumstance, which will undoubtedly lessen the weight of his testimony, there are others which will satisfy you that he ought not to be credited. He has not been uniform in his story. The statement he has made to you in relation to the derangement of his father is the reverse of that which he has made to others. William Knox says he was present when Mr. Peaslee asked Chase Prescott, the witness, whether insanity did not run in the blood of his family. Chase said he did not know that it did—he never knew any of the family to be deranged.

Norris Cochran testifies that on another occasion he heard Chase Prescott say he never knew any of the Prescott family to be crazy. If Abraham Prescott had been several times deranged, as Chase Prescott now represents, would he have said he never knew one of the family to be deranged? When he made these declarations he did not know that it would be favorable to the prisoner to state that his father was insane. He had then no motive to misrepresent the fact. There is one circumstance to which I would call your attention, which is conclusive, to show that Abraham Prescott never was deranged.

It appears from the testimony in the case that Abraham Prescott left twelve children, nine sons and three daughters. If he was deranged, all his children must have known it. Why is only one of all these children produced to establish this fact, and that one the father of the prisoner? If any of the other children would have testified that Abraham Prescott was deranged they would have been called for that purpose. The Counsel on the other side have undertaken to show that Mrs. Blake, a daughter of Abraham Prescott, was insane. But what could this, if true, avail the prisoner? No presumption can arise that a nephew is insane because his aunt was. If it had been proved that Mrs. Blake was deranged, you must still have gone back and inquired as to the sanity of Abraham Prescott, from whom the prisoner is descended. They have examined several witnesses to show that she was deranged, but do not establish the fact.

Hannah Huntoon says she lived with Mrs. Blake forty years ago: she was sometimes dull and melancholy—was called deranged. There were no difficulties in the family

while she lived there—her husband said she was out—she heard that Mrs. Blake was jealous of him.

Mary Rowe went to live with Mrs. Blake when she was about twelve years old, and lived with her two thirds of the time for twelve years. Mrs. Blake was sometimes cheerful and sometimes melancholy—found fault with her husband for going after other women. She thought her deranged.

Chase Prescott and Mary Prescott say that Mrs. Blake was insane. I shall make no remarks upon the testimony of these two witnesses at this time, as I shall have occasion to speak of it hereafter.

That Mrs. Blake was sometimes melancholy there can be no doubt; and the cause of her melancholy is sufficiently obvious. She entertained suspicions of the fidelity of her husband. These suspicions, whether well or ill-founded, produced a degree of melancholy, which some of the witnesses mistook for insanity.

Doctor William Graves says he lived in the neighborhood of Mrs. Blake for nineteen years, and was often at her house. He was her family physician—he never knew nor heard that she was deranged.

Benning W. Sanborn lived between twenty and twenty-five years within a mile of Mrs. Blake. He saw her often: she was not deranged. There were troubles in the family, but he does not know the cause.

Jeremiah Bachelder lived within 30 or 35 rods of Mrs. Blake for twenty-eight years: he says he never knew nor heard that she was insane.

Judge Burgin and Esq. Evans testify that they lived at a distance from Mrs. Blake, but were well acquainted with her. That her husband kept a public house in Deerfield, and as they had occasion to travel that way, they used to call frequently at his house. They never thought nor heard that Mrs. Blake was deranged.

It is further said that Mrs. Hodgdon, a half sister of the prisoner, was insane. Chase Prescott and Mary Prescott testify that Mrs. Hodgdon was always deranged when she was sick; that she was once taken suddenly ill at their house and a physician was sent for; that when she went home she refused to ride with her husband, or to nurse her child. When Mrs. Hodgdon was taken sick at the house of Chase Prescott, Mrs. Prescott says it took several persons to hold her, and she used medicines for a disorder in her head. These witnesses are the parents of the prisoner.

In weighing their testimony this relation must not be forgotten. I know nothing against their moral character; but where is the parent whose virtue would not be severely tried by being placed in a situation like theirs? When a child is put on trial for his life, and his parents are called as witnesses, how strong is their temptation to discolor and to misrepresent facts, in order to save him from an untimely and disgraceful death!

Let us consider, in the first place, what weight should be allowed to the testimony of Chase Prescott. The witness stated, at one time, in the hearing of William Knox, and at another in the hearing of Norris Cochran, that he never knew one of the Prescott family to be deranged. These statements were made since the death of Mrs. Cochran. He now tells you that his father—his sister, Mrs. Blake—and his daughter, Mrs. Hodgdon, were all deranged. These declarations, made in the hearing of Knox and Cochran, were not hasty and inconsiderate ones; they were made in both instances when the attention of the witness was called particularly to the subject of insanity in his own family; and in one of them when he was asked whether insanity ran in the blood of his family. Which of these statements is to be credited? That which was made when he had no motive to misrepresent, not supposing it would be of any importance to say that these relatives were deranged; or that which was made to you when he believed it was important to say that they were deranged, and hoped by that statement to save the life of his child? If it be true, as has been testified, that when Mrs. Hodgdon was taken sick at the house of Chase Prescott, she was deranged and it took several persons to hold her, why are none of those persons present, to prove the fact of her derangement? If it be true, that a physician was sent for, on that occasion, and that he gave her medicine for a disorder in her head, why has not that physician been summoned as a witness? Would the proof of the derangement of Mrs. Hodgdon have rested entirely on the testimony of the parent of the prisoner, if other testimony could have been produced?

We come now to a consideration of the testimony of Mary Prescott. She says that when the prisoner was about six weeks old he was sick; his head increased very much in size,—that Dr. Graves was sent for, and pronounced his case hopeless; that Dr. Graves told her if the child lived he would be deranged. Dr. Graves tells you that

Mrs. Prescott must be mistaken—the child could not have been so bad as she represents. He says he finds by his books, that the first time he visited the child was the 15th of March, 1815—the next time the 15th of April—he did not see him again till the 29th of August. He visited him once or twice more in September or October following. He says he is confident he should have visited him oftener if he had been very bad. He further declares that he has no recollection of ever telling Mrs. Prescott that the child would be deranged.

There can be but very little doubt that Mrs. Prescott is incorrect in her testimony.

It would be a waste of time to examine the evidence in relation to the alleged insanity of Benjamin Prescott, Marston Prescott, and Moses Prescott, because no one of them was a descendant of Abraham Prescott. Benjamin was a nephew, Marston was also a nephew, and Moses was a son of Marston. If it had been proved, by the clearest evidence, that Abraham Prescott was deranged, it would furnish no evidence of the derangement of the prisoner. No one will pretend, if a particular individual is insane, that all his descendants must be in the same unhappy state. It must be proved, then, in a satisfactory manner, that there were some marks, some symptoms, clearly indicating derangement in the prisoner, before you can believe that he was deranged. It has been contended with much earnestness, that the insanity of the grandfather, connected with the fact that the prisoner killed the deceased, furnishes sufficient evidence of his insanity. If this be true, then if any other descendant of Abraham Prescott had destroyed the life of any person, he must have been accounted insane as well as the prisoner. It appears from the testimony, that Abraham Prescott left nine sons and three daughters: his descendants are very numerous, and each one of them, if he should commit murder, might set up the same defence that is relied on in this case. Are the descendants of Abraham Prescott let loose upon society to murder whom they please with impunity? When any one of them is indicted for murder, shall he prove that his father or grandfather was insane, and shall that fact, connected with the killing, prove him insane? If these facts are evidence of insanity in the case before you, they would be evidence in the case of every individual who is descended from Abraham Prescott.

It has been stated by some of the physicians, that insan-

ity is hereditary ; that it may lie dormant in one generation and appear in the next. Through how many generations may this predisposition to insanity extend ? Does it cease with the second or third generation, or may it extend to the fourth or the tenth ? If this predisposition furnishes any evidence of derangement, how remote must be the person, who kills another, from his insane ancestor, before he is denied the privilege of proving the insanity of that ancestor as evidence of his own ? The truth is, that the derangement of one man is, in no case, evidence of the derangement of another. If a deranged father transmits to his children a predisposition to this disease, this circumstance affords no evidence of its actual existence. The insanity of every individual must be proved by such acts and such symptoms, as usually designate this malady of the mind.

It appears from the testimony of the physicians, as well as from the books that have been read to you, that there is a delusion resting on the mind of every insane man, which reason cannot remove. To this general rule the case of frenzy or raving madness forms an exception. Here no delusion is perceived to occupy the mind of the maniac. But in every other case delusion is the great mark by which insanity is known. You will remember that the Counsel have not asserted nor even intimated that there was any thing of frenzy or raving madness in the case of the prisoner. I will refer to one or two cases only, from the many that have been stated, to prove the existence of this delusion.

A gentleman in the neighborhood of Boston believed that people had attacked him with chlorine gas as he passed along the streets, and had thrown some of it into his chamber ; that it produced pains in his head. He fastened down his windows and caulked them, and kept cotton in his nose and ears. His friends endeavored to convince him that no such attack had ever been made upon him ; but their efforts were vain—the delusion could not be removed.

A female patient believed that she was actually dead, and several times requested her physician to have her buried.

In every case of insanity, with the single exception mentioned, there is this false belief—this strange delusion fixed upon the mind. It is soon perceived by others, because it occupies almost exclusively the thoughts of the insane man ;

and as he believes it to be a reality, he does not seek to conceal it. In order to establish the actual derangement of the prisoner, it is necessary to prove to you that he labored under some delusion.

Where is the evidence that there was any delusion, on any subject, at any time, resting on the mind of the prisoner? Many witnesses have been examined on the part of the accused, as well as on the part of the Government, and not one of them tells you that he ever discovered any delusion resting on his mind. When questioned on the subject, they all declare that they never perceived any mark of derangement about him at any time.

Notwithstanding this strong and conclusive evidence that the prisoner was of a sound mind, various circumstances have been mentioned as proofs of his derangement. It is said that he has been in the habit of walking in his sleep, and that somnambulism is allied to insanity. But the physician who states this, says, that it is no more allied to insanity than dreaming is. If it had been proved, then, that the prisoner was in the habit of walking in his sleep, it could have had but very little weight in establishing the fact of his derangement. But it has not been proved.

Chase Prescott and Mary Prescott say that the prisoner, when a child, used to get up and walk in his sleep. These witnesses are not to be credited.

Thomas Kimball testifies that the prisoner lived with him eighteen months, and that he never knew him to walk in his sleep during that time.

Chauncy Cochran says he never knew him to walk in his sleep during the time he lived with him, which was three years. He further states that in the winter of 1833, when he and his wife were wounded by the prisoner, Chase Prescott and Mary Prescott both told him that they never knew the prisoner to get up in his sleep before. From this evidence it is very clear that the prisoner was not in the habit of walking in his sleep.

It has been suggested that a short time before this murder took place, the prisoner was employed about heavy work, and that this produced insanity. Dr. Wyman says that any severe muscular efforts would be likely to produce insanity in a person predisposed to the disease. There is not the slightest evidence that the prisoner had been employed about any hard work or had made any great muscular efforts previous to the murder. It appears from the testimony of Chauncy Cochran that he had been engaged

in making wall only two days during the whole season ; that the week before the murder he had worked on the highway most of the time, and that on Saturday, the day before the murder, he did light work about the house.— Timothy Robinson says the prisoner did chores about the house of Mr. Cochran the day before the murder.

But the circumstance on which the Counsel for the prisoner chiefly rely to prove his insanity, is this : That in January, 1833, he struck Chauncy Cochran and his wife with an axe : that he had always lived on good terms with them, and could have had no motive to do them an injury. From this they would have you infer that he was insane.

It would be extremely dangerous for a jury to say that where a person commits a crime, he must be insane, if they can discover no motive for his conduct. The criminal, without doubt, must always have a motive for his conduct, but he may conceal it from the world. In this case there was a motive ;—he was actuated by a spirit of revenge.

George C. Thompson says that in September, 1833, he heard Mr. Fowler ask the prisoner why he struck Chauncy Cochran and his wife in January, 1833 : he answered that Mrs. Cochran scolded at him, and told him if he went out so much in the night, and tore and dirted his clothes in such a manner, he would be no more respected than his brothers. He said he did not like her for that, and always remembered it. Such a circumstance as that mentioned by the prisoner would, to most people, appear very slight, and would soon be forgotten by them. But an ill tempered and revengeful man might consider himself as very badly treated, and might be induced to seek for vengeance. The prisoner did not consider it as trivial ; he said he never liked her for that, and that he always remembered it. He gave no reason for his dislike of Chauncy Cochran, but you can learn it from the evidence.

Chauncy Cochran says that the prisoner used to beat his cattle very much ; that he scolded at him for it several times, and that the prisoner appeared to be cross. He disliked Cochran because he scolded at him, and sought revenge. But if it were not in your power to assign any motive for his conduct, you would not be justified in pronouncing him insane.

It appears from the testimony of Chauncy Cochran and that of other witnesses, that the prisoner has uniformly declared that he was asleep when he committed the violence

in January, 1833. If he was asleep you need assign no motive for his conduct; it would be absurd to be making enquiries about the motives that influenced the conduct of a sleeping man.

If he was not asleep, he practised the grossest deception; he invented the story of his getting up and doing the violence in his sleep, in order to save himself from merited punishment. Is it possible to believe that a deranged man would commit an act of violence upon the person of another, and then say he was asleep, to prevent his being punished? The law is clear, that when insanity is relied on as a defence, it must be shewn that the criminal was incapable of distinguishing between right and wrong; and if he is indicted for murder that he did not know that murder was a crime. When a deranged man commits an act of violence, he does not know that he has done wrong. If the prisoner had not known perfectly that he had committed a wrongful act, he would not have feigned the story of his being asleep. This affords satisfactory evidence that he was not deranged.

There is another very strong circumstance to show that the prisoner was not deranged. It appears from the evidence, that Chauncy Cochran and his wife, and all the neighbors, believed that the prisoner was asleep. This fact proves conclusively, that up to January, 1833, he had discovered no symptom of derangement. If he had done any act indicating insanity, people would have said he was deranged when he did the violence; they would not have believed that he was asleep.

But if he was insane in January, 1833, it would not be evidence that he was in the same state in the June following. Does the derangement of a person at a particular time prove his derangement five months afterward, without his discovering, by a single act or a single expression, any unsoundness of mind between these periods? It is not pretended that between these times there was any act or any expression indicating insanity. If without proof of any such act or expression it would be evidence of derangement after five months, it would after five years or twenty years.

Doctor Cutter says he has looked attentively at the prisoner. He finds that his eyes are dull and their motion slow; they denote an approximation to idiocy.

Nine or ten witnesses on the part of the Government have been examined as to the appearance of the prisoner; they all

say they have known him for many years ; and some of them that they have known him from his childhood. They tell you that his eyes were always dull and heavy and their motion slow ; that their appearance is the same now as it always has been. He is so far from approximating to a state of idiocy, that, according to the testimony of these witnesses, he always has been and still is a person of good understanding. You will recollect that no witness called in behalf of the prisoner contradicts this evidence.

It is said that the derangement of the prisoner was caused by Avery's trial. If the reading of this trial could have produced insanity, it should have been clearly proved to you that he read it. Mr. Cochran says he borrowed the book ; he had not read it when the prisoner and the deceased left his house ; he was reading it at that very time. If the prisoner had read it, the Counsel could have shown it by Cochran ; but they did not ask him the question. If they had, you can have no doubt as to the answer that would have been given. You cannot suppose that Cochran would have borrowed the book and let the prisoner read it before he had read it himself. Did the bare mention of Avery's having committed a murder cause his derangement ? Why did it not produce the same effect, when the story of the murder was first told ? Why did it not produce this effect, while the trial that lasted for weeks was proceeding, during which there was so much conversation respecting the murder ? If the mention of the murder caused derangement in the prisoner, it is remarkable that he should have exhibited no symptom of it at the house, the only place, according to the evidence, where the murder or the trial was mentioned. It is wonderful, that his derangement should not have seized him, until he reached the lonely place where the murder was committed ;—a place singularly suited to the accomplishment of the detestable object, which he himself declares he had in view.

It has been said that after the death of Mrs. Cochran the prisoner was deeply afflicted—that he lamented sincerely what had happened. If this be true it is not easy to see how it establishes the fact of his derangement. Suppose a man in a moment of passion should take the life of another, we may well imagine he would be filled with sorrow for what he had done, although he had the possession of his reason when he did the act. This would be the case with people generally ; but some are so hardened that they can commit the most atrocious deeds without any reproaches of conscience—without any emotion of pity for those whom they injure. If it shall appear from examining the evidence, that the prisoner felt no grief for what

he had done—that he counterfeited sorrow for the purpose of deception, it will furnish the most convincing proof that he was not deranged.

It is manifest from the testimony of William Abbot, Jr. that the sorrow of the prisoner was feigned. He says that on the 23d of June, soon after the murder, he found the prisoner in James Cochran's pasture; he was lying on his face, and making a noise like a person in distress. The witness wanted to know whether his grief was real; he watched him with particular attention, and found that he shed no tears. Others less observing than the witness were, without doubt, deceived. The prisoner could counterfeit the voice of sorrow; but his tears were beyond his power. When sorrow is of a nature so deep as to prevent the shedding of tears, it is always silent.

It is further urged as a proof of his insanity that he made no attempt to escape. Mr. Abbot says that he and Mr. Robinson were appointed keepers over him. He made no attempt to get away, because escape was hopeless.

William P. Blaisdell says he was in the jail in Hopkinton with the prisoner. An attempt was made by several persons to break jail; the prisoner was one of the principal hands in urging forward the business. He broke some of the bolts and said he meant to go to Canada. He quarrelled with a boy in the jail and boxed his ears for not discovering Mrs. Leach, the wife of the jailer, sooner than he did. It appears that he made an attempt to escape as soon as he had a prospect of effecting it.

It has been urged that the prisoner could have had no motive to murder the deceased; and that this circumstance is very strong to show his insanity. I wish you gentlemen to attend to the confession of the prisoner, from which you will learn what his motive was for the perpetration of this horrid deed.

John L. Fowler says that in September, 1833, he went to the State Prison, and asked the Warden if he might go into the apartment in which the prisoner was confined. The Warden consented. The witness requested the prisoner to give him particular information respecting the killing of Mrs. Cochran. He said he would if the witness would get Mr. Thompson and McDaniel out of the room. They went out, but Thompson returned back to the window, that he might hear what was said. The prisoner then said that Mrs. Cochran told him to ask her husband to go into the field with her and pick some strawberries; that her husband declined as he was reading Avery's trial. The prisoner said he would go with her and told her husband he was going into James Cochran's pasture

for them. He says that he and Mrs. Cochran went into James Cochran's pasture ; and when they were there he asked her to go down into the Brook field, and told her that the strawberries were more plenty there than were they then were. She consented to go. He says that when they were in the Brook field he attempted to dishonor her. She said he was a dirty rascal—that she would tell her husband and he should be punished. The prisoner told the witness he thought he should be sent to the State Prison, and he had as lief die : that he then struck her and put an end to her life. Mr. Thompson confirms the testimony of this witness in every particular.

Was the story told by the prisoner to Mr. Fowler and others, in which he confessed his motive for taking the life of Mrs. Cochran, the story of a maniac—of a deranged man—or was it the story of a man who possessed the full strength of his understanding ? Consider the object which he had in view ; the means selected to accomplish that object ; and then say whether any man could have selected means better calculated to effect the object than he did. His object was to have unlawful intercourse with the deceased.

The pretext under which he went with her into the field, was to pick strawberries. He selected the Sabbath ; on any other day people would have been in their pastures and fields at work, and he would, probably, have been interrupted in the business he had in view. He found that the husband of the deceased was reading Avery's trial—a book that excited, at that time, a good deal of interest—and he knew that he would not lay aside his book to go into the field to get strawberries. In order to prevent all suspicion of any bad design, he told her husband that he was going into the pasture of James Cochran. This pasture was near the house of her husband, and several other houses.

Expecting, probably, that the husband of the deceased would look to see what course they took, he went with her into James Cochran's pasture as he had mentioned. This place was not suited to his purpose ; it was in sight of the road and within thirty rods of the house of her husband and of two or three other houses. He persuaded her to go to the Brook field, where she was murdered, by telling her that strawberries were plenty there.

You should remember, gentlemen, that the prisoner was well acquainted with this place : he knew there were but few, if any strawberries there. It appears from the evidence that a few days before the murder he was employed in making fence at this place ; and the very day before he was sent there to get bark.

The place where the deceased was murdered was in a deep valley ; lower by a hundred and fifty feet than the house of her husband. It was surrounded by thick woods on every side but one, and on that side no house was to be seen—none was near.

In this lonely, solitary place, where they were seen by no human eye ; where the cry of distress could reach no human ear, the prisoner attempted to gratify his brutal passion. The deceased resisted him ; threatened to tell her husband and have him punished.

If he did not effect his diabolical purpose, he at least attempted it ; and the very attempt to effect such a purpose is a crime for which he was liable to be sent to the State Prison. When the prisoner found that he was resisted, and that he had committed a crime for which he was liable to be sentenced to the State Prison, he determined to take her life.

It has been said that he would not commit a murder, for which he would be liable to suffer death, rather than run the risk of being sent to the State Prison for an attempt to dishonor the deceased : that this is altogether incredible. The prisoner told John L. Fowler he would as soon die as go to the State Prison. But the fact is, he expected by destroying the life of Mrs. Cochran that he should escape all punishment.— You remember, gentlemen, it has been testified that when he struck the deceased and her husband in the winter of 1833, and came very near to killing them, he stated that he got up and did the injury in his sleep ; he made them believe, and he made all their neighbors believe, that he really was asleep. He expected to have been equally successful on this occasion. Accordingly, when Mr. Abbot found him in James Cochran's pasture soon after the murder and asked him what he had been doing, he said he had killed Sally ; that he had the toothache, sat down by a stump ; and as he beleived fell asleep as he knew nothing until he had killed her. He told the husband of the deceased that he had the toothache and sat down by a stump ; and that he knew nothing until he had killed her.

I pray you, gentlemen, to observe the inconsistency,—the deceit of the prisoner. He told Mr. Fowler that he struck the deceased with a stake—that she probably did not perceive him as he was approaching her to give the blow. This without doubt is the truth. The stake was found on the spot where the murder was committed ; it has been produced, and exhibited to you ; and as the blows were received on the back part of her head, she did not, in all probability, see him as he approached her. In order to avoid punishment he stated to others that

he had the toothache and sat down by a stump ; that he knew nothing until he had killed her, and supposed he was asleep. It may be asked,—if he intended to make people believe that he was asleep, why did he confess that he killed her—state the instrument with which he did it, and all the circumstances attending the deed, without intimating that he was asleep ? You will remember that this confession to Fowler and others, was made in September. On the day when the murder was committed, he said he sat down by a stump, and knew nothing until he killed her, and supposed he was asleep. When he found that this story was not credited, he changed his ground ; and now, instead of pretending that he was asleep, he contends that he was deranged ; and as a strong circumstance to prove his derangement, he says that he could have had no motive to kill Mrs. Cochran.

That he attempted to have criminal intercourse with the deceased, is apparent, not only from his confession, but from the circumstances that have been proved to you. Let us consider them.

Six witnesses testify that the grass was trodden down near the spot where the murder was committed, in a circular form, as if there had been a struggle. Three or four witnesses, on the other hand, say, they do not suppose, from the appearance of the grass, that there was any struggle ; that the grass was no more pressed down than might have been expected from knocking the deceased down and dragging her away. But some of these last witnesses say that the grass was pressed down in a circular form. It is manifest that if the prisoner had only knocked her down and dragged her away, the grass would not have been pressed down in a circular form ; if there had been a struggle, it would. It is clear that there was not only a struggle, but that it must have taken place before he struck her. Her comb, her calash, and one of her ear-rings, lay on the ground ; the other was in her ear, unlocked. Only one tooth of the comb was broken : her calash was unstained with blood. It appears from the evidence that the comb she wore was a large one, and covered the back part of her head, where she received the blows. If the comb had been in her head when the blows were given, it would have been broken to pieces. If the calash had been on her head when the blows were given, it would have been bloody.

As the blows were struck on the back part of her head, they could not have caused one of the ear-rings to fall on the ground and the other to be unlocked in her ear. The comb, the calash, and one of the ear-rings must have been on the ground

and the other must have been unlocked, before she was struck. How could all this have happened without a most violent struggle? For what purpose could a struggle have taken place between them, before a blow was given, if it was not for the purpose of having criminal intercourse with her? Why was she persuaded to go to the lonely spot where she was murdered, if he had not intended to have such intercourse? You must have known that this was the object of the prisoner, from the circumstances that have been proved to you, if he had not confessed the fact. It having been clearly proved that the prisoner attempted to dishonor the deceased, you cannot doubt that he killed her for the purpose of avoiding punishment, in the manner I have stated.

In the conduct of the accused you can discover great and appalling wickedness, but you can discover no mark of insanity. He had formed a deliberate plan to have unlawful intercourse with the deceased. The time, the place, and all the means for accomplishing that plan were laid with unusual skill. The law as I have already mentioned is clear, that when a man is indicted for murder and rests his defence on the ground of insanity, it must be proved, beyond a doubt, that at the time when the act was done, he was incapable of distinguishing between right and wrong—that he did not know that murder was a crime.

You will find upon examining the conduct of the prisoner, that in every part of it, when he did wrong he knew it perfectly. When he attempted to have intercourse with Mrs. Cochran, he knew he had committed a crime, which condemned him to the State Prison. This he confessed to Fowler and others, and said he would as soon die as go to prison.

When he killed Mrs. Cochran he knew that he had been guilty of murder; he knew what punishment the law inflicted on the murderer. When he first saw the husband of the deceased after he had killed her, and had confessed what he had done, he asked him if he meant to have him hung.

In order to avoid this punishment he feigned the story, that he sat down by a stump—and as he knew nothing until he killed her—he supposed he was asleep.

It has been said by Counsel, and it appears from the testimony of the physicians, that a man may be deranged as to one subject, while he is rational as to every other. That such partial insanity sometimes exists there can be no doubt; but this cannot avail the prisoner, because it has not been proved that he was insane on any one subject. If it had been shown that the prisoner was partially deranged, in order to entitle him to a

verdict of acquittal, it must have been further shown that the killing of the deceased was connected with such derangement. The connection between the act and this disease of the mind must be clear: the act must be produced by the disease. A person, who is partially deranged, is as much answerable as others for all his criminal acts, not connected with his derangement. In order that the prisoner may be exempted from punishment, it should have been proved that he was under some delusion with respect to Mrs. Cochran, so that he did not know that to kill her was a crime. If, for example, he had believed that he had received a command from Heaven to take her life, and under that delusion he had killed her, he would not be punishable; because he would not, in that case, perceive that the taking of her life was wrongful. But he acted under the influence of no delusion with respect to her that made him ignorant that the deed he committed was a crime: he was urged on by the violence of his unbridled passion to attempt to dishonor her. Finding that he had perpetrated a crime, for which he was liable to be confined in the State Prison, he resolved to take her life and to screen himself from punishment by telling the story of his being asleep, which, on a former occasion, had exempted him from suffering.

An attempt has been made to excite your sympathy in favor of the prisoner. This is not a difficult task. When a person is on trial for his life, it is natural to feel compassion for him—we place ourselves in his situation, and consider what would be our anxiety and our feelings, if we were on trial; and we willingly extend to him that pity, which we should desire for ourselves. So strongly does this principle operate, that it suspends, for a time, the exercise of reason; we forget the welfare of the community and think only of the safety of the accused.—But are the sufferings of the criminal alone to be regarded? If the crime of murder should go unpunished, what must be the sufferings of society? How wretched must be its condition? The lives of the most virtuous and useful citizens would be sacrificed; and scenes of violence and of bloodshed would be everywhere presented.

When the murderer is put on trial our pity is strongly excited in his behalf; but how little do we think of him whose life has been destroyed. He is removed from our sight; his connexion with the world is at an end; he seems to be forgotten or to be remembered only by his nearest relatives and friends.—It is a false, an ill directed humanity that leads us to bestow all our compassion on the criminal, while we entirely forget the victim of his crime.

During the trial of this case how little have we thought of the deceased ! We have felt for her scarcely a single emotion of pity. It is true, that no feelings of compassion can avail the dead. They cannot recal her departed spirit : they cannot reanimate her mouldering dust. But for the benefit of the living, we must think of the dead.

When the deceased left the house of her husband, little did she imagine that she was to return no more ; that she was separated forever from the dearest object of her affection. Little did she imagine that she had seen for the last time her infant children, on whose innocent features she had so often gazed with delight. Little did she suspect that the hand of a murderer was soon to be raised against her life ; that in a few short moments she was to be sent to the Judgment seat of God, and to receive her sentence for Eternity.

Can a man who has perpetrated such a deed of barbarity and horror deserve your compassion ?

I will not undertake to describe to you the grief of the aged parents of the deceased ; the agony of her husband ; or the distress of her orphan children.

I mention these things very briefly, that you may think of them ; that you may feel the necessity of punishing the author of such complicated wretchedness.

It is a fact deeply to be lamented, that murders within a few years past have become much more frequent than they were. How is this to be accounted for ? Not by the increase of population, because other crimes have not become more common. The reason is, that marders, through the compassion of Juries, have been acquitted altogether, or their crime has been reduced from murder to manslaughter. Impunity invites to the commission of crimes ; and so long as Juries shall acquit the guilty through compassion, so long murders will continue to increase. The Legislature have denounced the punishment of death against the crime of murder : you are sworn to execute the law. Whether the prisoner is guilty of the crime with which he is charged is the only question for your determination. No feelings of compassion should lead you from your duty. If you believe him to be guilty, the welfare of the community as well as the oath you have taken requires you to con-

M

Chief Justice RICHARDSON then charged the Jury, as follows :

Gentlemen of the Jury :

Appeals have been made to your feelings, in the course of the argument, on both sides; but you must take care not to let those appeals create any improper bias in your minds. Without doubt the situation of this unfortunatè youth, is, on the one hand, calculated to awaken compassion. But however amiable compassion may be on a proper occasion, you must remember that the question now is, not whether his situation is to be commiserated, but whether he is guilty or not guilty;—that you are sitting in a court of *justice*, and that *mercy* is lodged in another department of the government. On the other hand, the deed which it is admitted the prisoner has done, is calculated to excite deep feelings;—but no feelings must be permitted to warp your judgment. The enquiry now is, not whether a murderer ought to be punished, but whether there is a murderer to punish. You are in the house of God—and you will do well constantly to bear in mind, that you are in the presence of HIM to whose allseeing eye your most secret thoughts, inclinations and motives are perfectly visible—in the discharge of the most solemn duty that can ever devolve upon you—a duty, the right performance of which demands cool, calm, deliberate judgments, and honest hearts—the duty of holding the scales of justice even between the State and the prisoner. Let no improper motive disturb the balance.

The prisoner stands charged with the murder of Sally Cochran. To this charge he has pleaded that he is not guilty, and the burden of proving the charge rests upon the government.

A contest between the State and a humble individual is apparently quite unequal. But the humanity and the wisdom of our laws leave a prisoner very little ground of apprehension on this account. For in the first place you are made the judges as well of the law as the fact, in order that, if he be condemned, he shall be condemned by laws which your judgment has approved as sound and reasonable. In the next place he is furnished with able counsel, and with the means of procuring the attendance of all his witnesses. And further, it is the duty of the court to see that he is placed on equal ground, and that he has the full benefit of every legal principle that is applicable to his case. And it is made your duty to pause, and not pronounce him guilty, until every reasonable doubt of his guilt is removed from your minds. All this is done that there may be a fair and equal trial, and that there may be no convictions in doubtful cases. Punishment, to be salutary, must be seen and felt by all to be just.

I shall not examine the question, which has been discussed by those who have argued the case, whether it is fit and expedient that the crime of murder should be punished with death. That is a question to be settled by the legislature, and not by a court or a jury. It is our business to administer the law as it is, and not to settle what it should be. It is enough for us to know, that the statute declares, if any person shall commit wilful murder, such person shall, upon conviction, suffer death. The only question now to be settled is, whether the prisoner is guilty or not guilty, of having violated this statute.

There is very little either of doubt or controversy with respect to many of the most material facts and circumstances of this case.

The prisoner was of the age of 18—had lived in the family with the deceased about three years—was always a good boy; and although sometimes cruel to the cattle, was always kind to the family—active in business—ready to obey—and never had been known to have any quarrel with the husband or the wife. On Sunday, the 23d of June, 1833, he went to the husband, and told him the deceased wished to go out and pick strawberries, and asked the husband to go. But he, being engaged in reading, declined. The prisoner and the deceased then went out to the field together. This was about nine of the clock in the morning. In about an hour afterwards, the husband, hearing a noise at the barn, went out and found the prisoner there. When the husband approached him, he at once stated that he had struck the deceased with a stake and killed her, and went with the husband to the spot where she lay. She was found among some bushes, about thirty feet from the place where her calash, comb, and basket of strawberries lay, and where the stake with which the blows had been given, was also found. When the prisoner was directed to go for help he refused. But although left near the spot by the husband, he made no attempt to escape, but was afterward found at a little distance, lying upon the earth, with his face towards the ground, with his shirt partly off, making a noise like one in great distress, but there were no tears in his eyes. He seems to have been equally ready to confess the deed, and to meet the consequences.

Thus far there is no doubt as to the facts and circumstances of this extraordinary transaction. The deed stands admitted, without any pretence of justifiable cause; and all which the evidence on both sides, in the case, discloses, is so far from showing any probable motive to do the deed, which can be deemed calculated to influence the determination of a rational mind, that it hardly enables us to form even a satisfactory con-

jecture of any motive whatever. And yet he was impelled to the deed by something more powerful than even the love of life itself. For he was aware of the consequences of the act.—When he first disclosed the matter to the husband, he at once enquired if he would hang him.

This is a clear case of murder, if the prisoner had the use of his reason : and every person is presumed to have that until the contrary appears. This presumption is grounded on common experience, the only foundation on which a great part of our knowledge rests. We find by observation that men in general, with comparatively few exceptions, have the use of their reason—and this renders it so probable that any individual we meet is in the common condition of men, that we always take him to be so until something appears to show the contrary.

There is no evidence in the case which shows any derangement of intellect whatever in the prisoner, at any time, except what results from his very extraordinary conduct in the night of the 6th January, when he must have come very near taking the life of both husband and wife with an axe, when they were asleep together in bed ; and his equally extraordinary conduct on the day when he took the life of the wife. But his conduct on those occasions, and the attending circumstances, demand the most attentive consideration and scrutiny.

The case then is reduced to this one enquiry—Had the prisoner the use of his reason ? And we are of opinion that, if under all the circumstances of the case you have any reasonable ground to suppose that the prisoner could not have had the use of his reason, you are bound to acquit him : for a public execution for an act, probably done under the influence of insanity, instead of promoting the great ends of justice, would tend rather to excite alarm in the minds of the community, and a suspicion that justice had not been duly administered.

And in order that you may decide the question presented to you, without any bias arising from an apprehension of danger to other persons from his acquittal, I feel it to be my duty to say to you, that, if acquitted on the ground of insanity, he will not be permitted to go at large, but will be confined, under the statute which makes provision for such a case.

It is clearly proved by medical books of high authority, and by physicians whose testimony is entitled to great respect, that very extraordinary cases of deranged intellect sometimes occur—cases of sudden derangement—cases of partial derangement, where the sufferer is insane on some one subject, and sane on all others—cases of concealed derangement on some

particular subject, which it is exceedingly difficult to detect. Indeed, it appears by the evidence on this point, that, so various are the shapes it assumes, so different its extent in different individuals, there is often in it such a strange mixture of intellect and delusion, of bright thoughts and mere dreaming, that all our calculations, as to the forms in which it may be exhibited, are baffled. New and extraordinary cases of the disease from time to time occur, which perplex and confound even those who have been longest and most thoroughly acquainted with the subject.

The testimony which has been laid before you, gentlemen, on this subject, merits, and will undoubtedly receive, your most attentive consideration.

It is well settled, that so far as the sufferer acts under the influence of the disease, he is not accountable. It is reason alone, which can make a man answerable for his conduct in a court of justice. Humanity can hardly endure the thought of punishing an insane person for his insanity.

In settling the question of sanity in this case you must constantly bear in remembrance, that men who have the use of their reason, do not commit crimes of great atrocity at the hazard of their lives without motives, without strong inducements urging them to the deed; and that when in such cases no notice, no inducement, can be found, this may in itself be evidence of a want of the use of reason.

There is nothing in the evidence which shows that the prisoner had any evil act in contemplation when he went out into the field with the deceased. On the contrary it appears that he invited the husband to go with them. He carried no deadly weapon. The stake with which the blow was given was found by him at the spot. These circumstances deserve particular attention.

It will be very material to consider his accounts of the transaction in his confessions to Fowler and Thompson.—He at first pretended that he had the toothache—sat down—fell asleep, and when he awoke found that the deed was done. When told by Stinson that this story would not do, he seems to have had another ready. He then said he believed he liked her too well—that he made improper proposals, which she rejected; that she threatened to tell her husband, and that he, supposing that this would send him to prison, took her life in order to prevent that.

Nothing could, under the circumstances, have been more

wild and incredible than the supposition that he could have been asleep when the blows were given. And the other pretence, that he took her life to escape imprisonment, although not quite so wild and incredible as the first, has very little probability in its favor, if he had the use of his reason. The proposal, although highly improper, was no crime; and no one in his reason could have supposed it to be a crime. Yet according to his account, in order to escape imprisonment for this supposed crime, he did that which must immediately send him to prison and subject him to the punishment of death. You must consider whether these are pretences that would occur to a sane mind.

False pretences and contradictory statements are common with those who would conceal the truth. But here the prisoner has concealed nothing. He has confessed all. And it must be remembered we are now examining his confessions, not for the purpose of learning what he has done, but for the purpose of ascertaining the state of his mind when he did the act for which he is now on trial.— And it is a very remarkable feature in the case, that although he has set up the very incredible pretences just stated, no witness has ever heard him set up any pretence of a want of understanding at the time. What occurred to almost every mind in the community upon hearing of the transaction seems never to have occurred to his mind.

If therefore nothing were disclosed of the conduct of the prisoner except what took place on the 23d June and afterwards, it would be your duty to pause and consider well the subject before you pronounced him guilty. For you find no motive—no evidence of settled ill-will, or hopeless attachment, that would lead him to a deed so horrid, so fatal to himself. It is difficult to conceive, that either love or hatred of sufficient power could exist in a heart so young, without disclosing itself in many ways to those around him. And yet you will look in vain through the evidence laid before you for any such disclosures. He seems to have lived in the family just as other lads of his age live in a family, without any thing in his conduct or conversation at all out of the common course. His conduct on the 23d June, if it stood alone, would present a very extraordinary case. But however extraordinary his conduct on that occasion may appear, it is not at all more so than his conduct on the night of the 6th January.

On that occasion both the husband and the wife were severely wounded by him with an axe while they were asleep in bed.

On that occasion, as in June, when he was first discovered, he appeared to be in great distress, and confessed and admitted all that he had done.

Now if he then had his senses and murder was his purpose, he might easily have finished the work of destruction. Both the husband and the wife were rendered senseless for some time by the blows received; yet when he found them reviving, instead of despatching them as he might easily have done, he called up the mother of Mr. Cochran, and rendered them all the aid in his power.

On neither occasion did he make any attempt to escape. The guilty fly when no one pursues. But he did not attempt to fly.

And what is certainly most remarkable with respect to the transaction in January, such had been his conduct in the family and such was the confidence reposed in his integrity, that every body seems to have been satisfied with his account of the matter, and to have supposed that he must have been asleep when the blows were given. This circumstance deserves a very attentive consideration.

Now if he was in his senses in June when he took the life of Mrs. Cochran, it is hardly credible that he was otherwise in January when he made the attack upon the husband and wife.

But on the other hand, if the attack in January was made under the influence of a deranged intellect, it is very difficult to believe, that the act for which he is now on trial was not done under the same influence.

If he has been all the time sane, his conduct has certainly been most extraordinary. And on the other hand if he has been otherwise than sane, it is a very extraordinary case of insanity. And here the great difficulty in the case meets you. And I must confess that all my experience among men, and all that I have seen and known of their conduct and of the motives and views which ordinarily influence their conduct, furnish me with no satisfactory solution of the difficulty, which this view of the case seems to me to present. But you, gentlemen, must consider and judge for yourselves.

There are, however, other circumstances to be considered. The place where the act was done, and the situation in

which the body was found, and his conduct at the time, must be attentively examined. It appears that the body had been dragged about thirty feet, and left among some bushes. This circumstance certainly seems to indicate that the prisoner must at first have had some purpose of concealing the transaction; and that would be evidence of a consciousness of guilt. But then on the other hand, the calash, the comb, the basket of strawberries and the stake were left upon the spot where the blows were given, in the open field, in full view, and he immediately returned, and not only disclosed all he had done, but conducted the husband to the spot, where the body had been left. It is for you, gentlemen, to judge whether these circumstances and his conduct, so far as it is disclosed in the evidence, do not on the whole show the unsteady, wavering operations of an unsettled intellect rather than any plans which conscious guilt can be supposed likely to have adopted for the purpose of escaping punishment.

There is evidence in the case which has a tendency to prove that the prisoner has a bad temper, and that he has been cruel with respect to animals. This must be duly weighed. But you must at the same time recollect the evidence in favor of his general good character, his kindness to the children, his industry, his readiness to obey. He is entitled to have this fairly weighed and to have the full benefit of it. Every one in his situation and at such an hour as this must be to him, if he has before sustained a good character, is to be allowed to avail himself of it to the utmost extent it can go. It should have its due weight. It is one of the advantages of a good reputation, that it has its weight on such an occasion.

There is evidence in the case tending to prove a predisposition to insanity in the family to which the prisoner belongs. There is also evidence offered to show that his head was disordered and enlarged in his infancy. There is, however, other evidence which goes to contradict all this. How the fact is, you must determine. If you find a predisposition to insanity in the family, it does not prove the prisoner to have been insane; it can only render it more probable that he was so, and is to be weighed with the other circumstances in the case.

It is said by Dr. Cutter, that there are in the looks of the prisoner, in the motion of his eyes, in his behaviour on this trial, symptoms of deranged intellect. Dr. Cutter

has had great experience in cases of insanity, and his opinion is entitled to much weight. You have also had an opportunity to observe the conduct and appearance of the prisoner, on this occasion, and what you have seen must be carefully considered.

The testimony of William Abbot must also be examined. He found the prisoner lying upon the ground, apparently in great distress, with his shirt partly off;—when asked why he took off his shirt, his reply was, that he did it for the purpose of hanging himself, because he supposed he must be hung. This certainly shows that he was conscious of the consequences of the act which he had done. But the witness further states that the prisoner slept quietly and soundly to all appearance the next night. And it is very difficult to conceive how one so young, one who had been brought up in a Christian community, amid all the advantages of moral and religious instruction which the prisoner must have enjoyed; one whose general character had been so fair, could at once become so hardened in iniquity, so indifferent to the awful consequences of such a deed, as to be able to exhibit a mind so composed, a conscience so quiet immediately after the transaction, if he was in his right mind. In a Roman tribunal, two sons who were found quietly asleep in an apartment where the body of their murdered father was also found, were at once acquitted of the murder, because it was supposed to be impossible that they could have slept quietly immediately after such a deed.

It has been insisted by the Attorney General, that when a man generally acts and talks rationally, this is evidence of a sound mind. And without doubt it is so. But it is a well established fact that men sometimes are sane on all subjects but one, and perfectly insane on that; and that the question now to be settled is, not whether the prisoner is generally sane, but whether the act for which he is now on trial must not have flowed from some partial derangement of his understanding.

The attempt to escape from Prison, made by the prisoner and others, is urged against him as tending to show a consciousness of guilt. It is certainly to be weighed among the rest of the evidence. But while you examine that circumstance, you must remember, that on the day when he took the deceased's life, and when he was at large, and he had an opportunity to escape, he made no attempt.

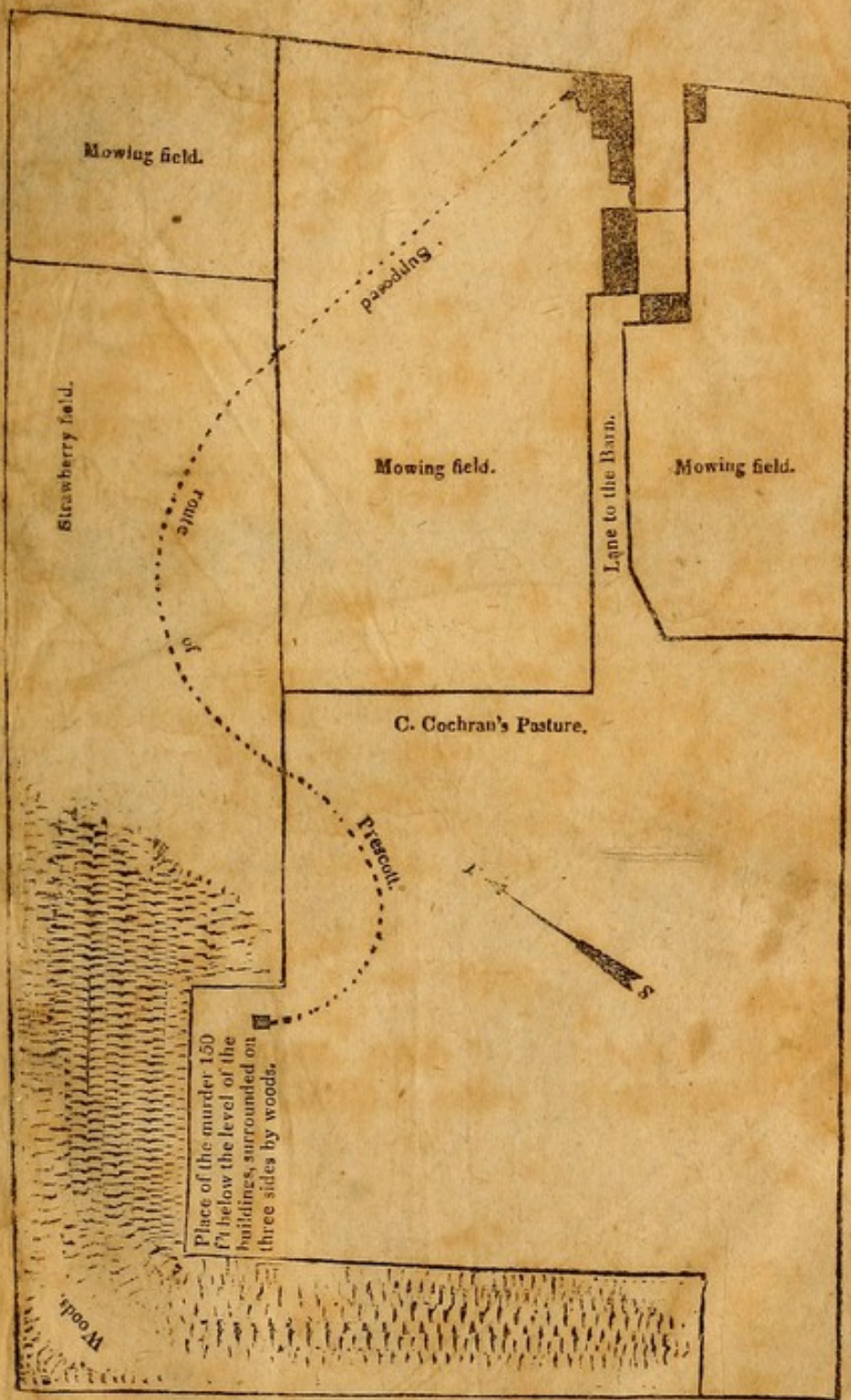
It has also been insisted, that the prisoner persuaded the

deceased to go to the field ; that he knew the husband was engaged and would not go, before he invited him ; that he induced the deceased to go to the fatal spot, by representing to her that the strawberries were in plenty there ; that he at first used force and violence to obtain what he had said he only proposed to her ; and that to escape punishment for that force and violence, he took her life. All this may be true, but there is very little of it which is shown to be so by the evidence. It is almost entirely mere conjecture. There is no evidence that the prisoner first invited the deceased to go to the field. There is nothing to show what was done at the spot but the condition of the grass, the situation in which the calash and comb were left, and the appearance which the person and clothing of the deceased exhibited when she was first found. Some of the witnesses think that the grass was so trodden down as to indicate a violent struggle, but others are of opinion that the grass would have exhibited the same plight, had she been only struck down and dragged away from the place ; and there is no evidence that any thing about her person or clothing indicated any such struggle as it is insisted must have taken place.

You must carefully examine and compare all these circumstances, but take good heed that you do not let mere conjecture stand in the place of proof.

I have now called your attention to what seem to me to be the most material circumstances of the case,—and with these remarks and directions shall submit the case to your decision.

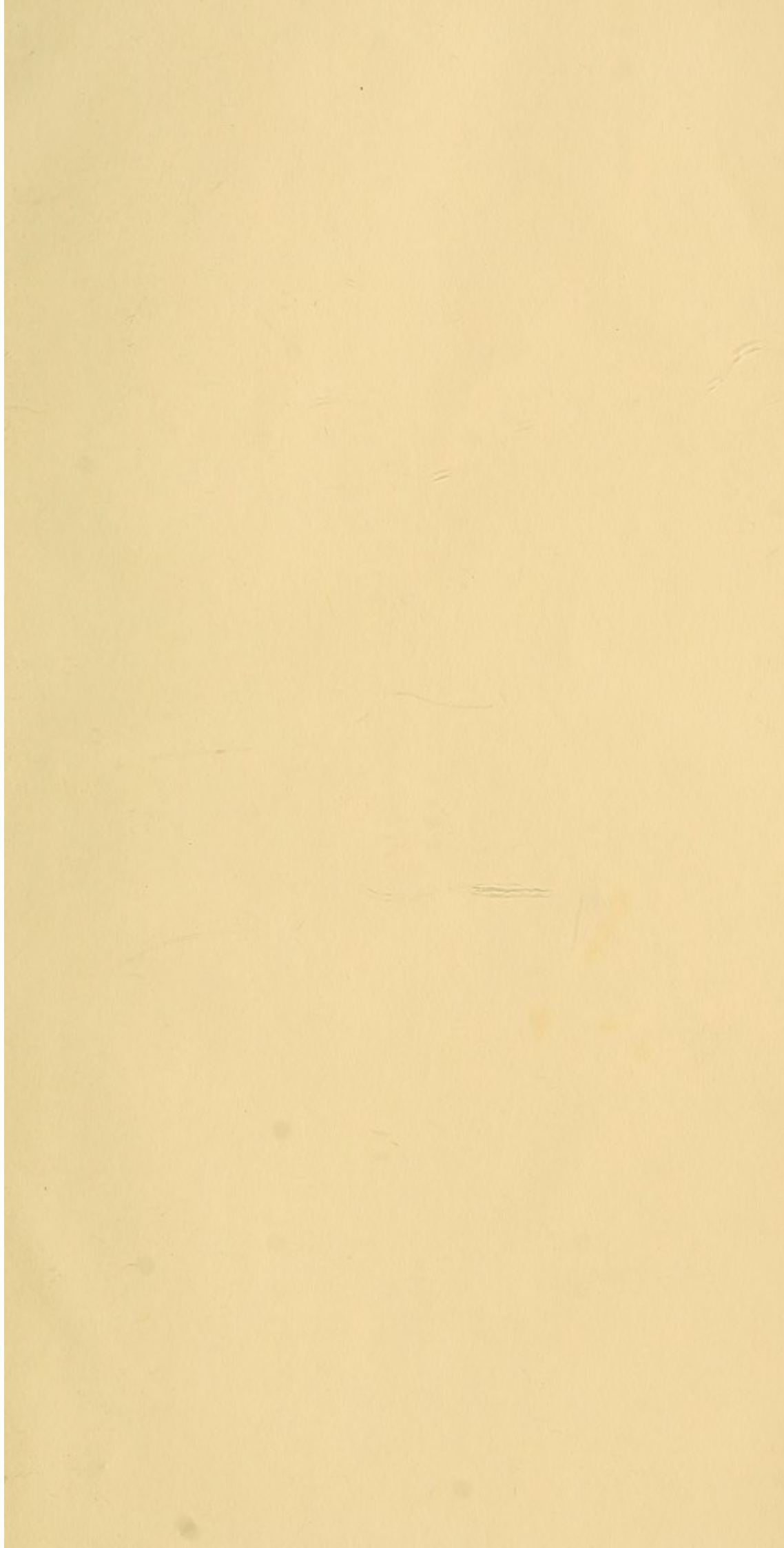
The Jury retired, and at half past 8 o'clock, on the following morning, brought in their verdict of **GUILTY**.

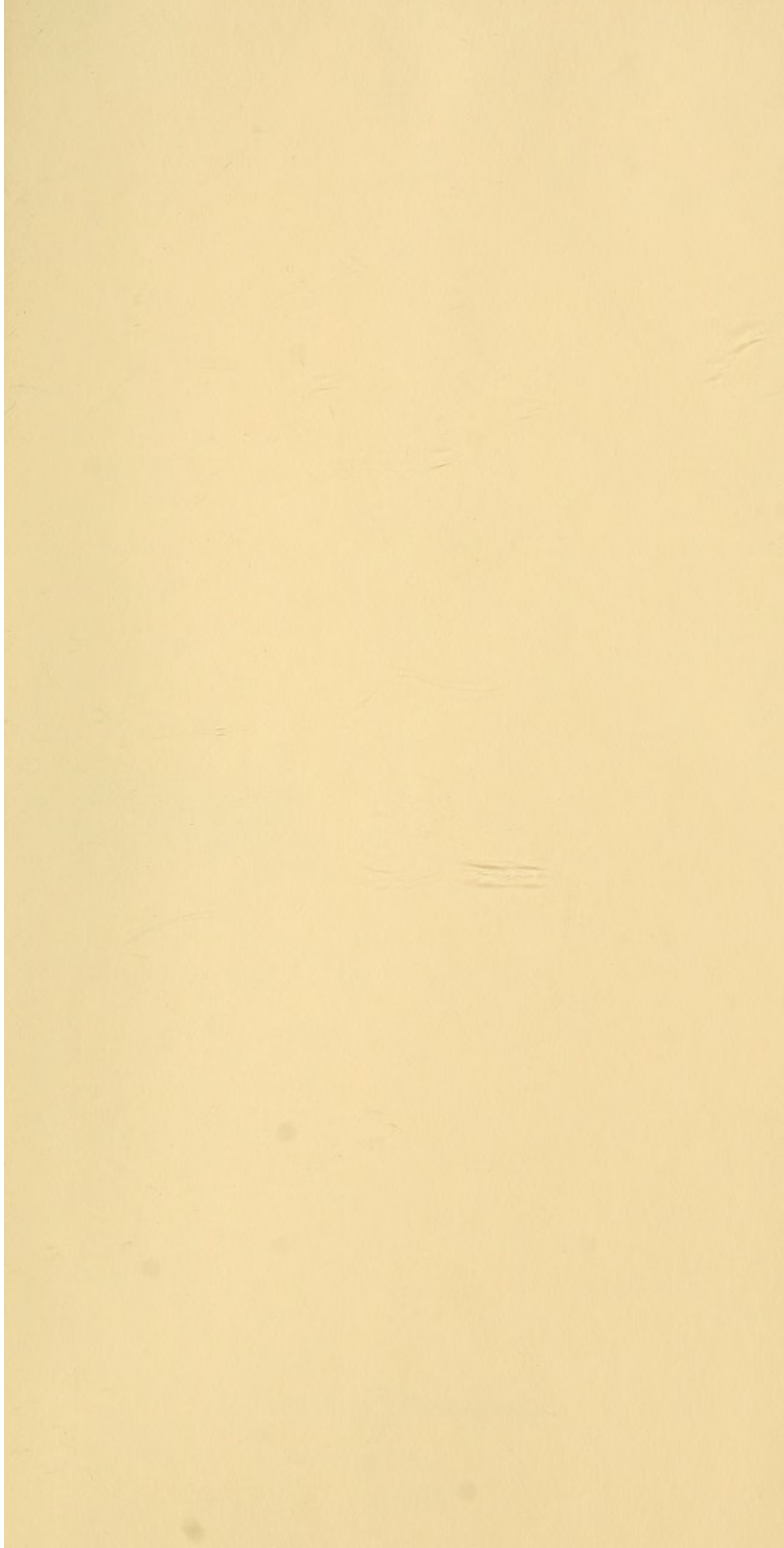


Plan of the ground and buildings near the spot where Mrs. Cochran was killed, and of the supposed route from the house to the scene of murder.



Plan of the ground and buildings near the spot where
 the murder was committed, and of the supposed route
 from the house to the scene of murder.





COUNTWAY LIBRARY OF MEDICINE

HV

6533

N3 P92

RARE BOOKS DEPARTMENT

