The trial of William Freeman : for the murder of John G. Van Nest, including the evidence and the arguments of counsel, with the decision of the Supreme Court granting a new trial, and an account of the death of the prisoner, and of the post-mortem examination of his body by Amariah Brigham, M.D., and others / reported by Benjamin F. Hall.

Contributors

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TO THE PUBLIC.

Being advised by Legal and Medical men, that the trial of William Freeman for the murder of John G. Van Nest was, in view of the extraordinary character of that tragedy, the mental condition and singular appearance of the prisoner, and the important questions of medical jurisprudence involved in the case, justly regarded by the profession as one of the most remarkable that ever occurred in the United States; and being urgently desired to procure and publish an accurate report of the same, together with an account of the post-mortem examination by Doctor's Brigham, McCall, Briggs, Dimon, Van Epps, Fosgate and Hyde, made with reference to his probable insanity, the publishers of this volume, soon after his death, took measures to obtain such a Report as seemed to be demanded, for publication.

That it might be free from suspicion of bias, it was deemed advisable that it should be prepared by some gentleman other than any of the judges or counsel connected with the trial. Learning that it would be agreeable as well to the judges who composed the Court of Oyer and Terminer, as the counsel respectively employed in the case, to have the report prepared by Benjamin F. Hall, Esq., a counsellor of this city, that gentleman was solicited to prepare the work. We believe it has been executed with fidelity. Our desire that the volume should embrace the arguments of Gov. Seward and Attorney General Van Buren, induced us to delay the publication until a report of both of them could be obtained. We now give to the public

the whole testimony and the speeches of both those eminent counsel to the jury. As it has been our purpose to give to the learned professions and to the world an accurate and well executed report of one of the most interesting and extraordinary criminal trials that ever occurred in our country, and believing that such purpose is answered in the following pages, we commit the volume to the public with the hope that it will be found in every respect interesting, truthful and satisfactory.

THE PUBLISHERS.

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THE TRIAL

OF

WILLIAM FREEMAN.

THE CASE.

WILLIAM FREEMAN, the subject of this notice, was born at Auburn, in the county of Cayuga, New-York, in the year 1824. His father was born a slave, but became a free man in 1815, by purchase of his time, under the act for the gradual abolition of slavery in New-York. He died in 1827, from disease of the brain, caused, as was supposed, by a fall from the dock into the basin at Albany. Of his brothers and sisters two only survive, and one of them has for twelve years past been a wandering lunatic; one of those that have died, a sister, was, for many years immediately preceding her death, insane.

The wife of James, and mother of William, was a native of Berkshire, Massachusetts, from which place she was transferred, as a house servant, to Auburn in 1817. Her father was black, her mother a red woman of the Stockbridge tribe, but in whose veins, however, ran some French blood, as was said; so, that subject to that qualification, William was a quadroon of Tartar and African descent, with a visage strongly marked with the distinctive features of the North American Indian.

So far as is now recollected by those who observed him, William indicated the possession of capacity equal to that of ordinary colored boys of his age, until he attained the age of twelve or fourteen years, when he began to display eccentricities in manners that were attributed rather to an extraordinary penchant for strolling than to any mental defect or depravity. As he advanced in years, however, a species of taciturnity seemed to mark his behavior. This was observed by his employers, and especially by his mother, who, though a poor colored woman, had a care for his habits and welfare.

From the best information that can now be obtained, it appears that when

William, as he is called, (Hannibal, as he was named,) arrived at the age of seven or eight years, he was placed in the family of Captain Allen Warden, then of Auburn, as a servant boy, where he lived about a year. He was then transferred to the family of Ethan A. Warden, Esq., where he served in the same capacity, until some time in 1833, when he was discharged on account of an uncontrollable disposition for play with other colored boys, which rendered his services valueless. Not long after this, his mother obtained a place for him in the family of Judge Satterlee, of Lyons, in Wayne county, where it was hoped that his habits might be corrected. But no benefits resulted from removing him from his former associates. Although sometimes obedient, he was inclined to wander and rove, and in respect to this, exhibited a tact at strategy that was strikingly indicative of his Indian maternity.

But notwithstanding his faults, he had a buoyancy of spirit, a playfulness of manner, and an elasticity of movement, that arrested attention and induced a strong desire for his retention as an errand boy and domestic. The young Indian, as he was sometimes called, however, could not be confined to either kitchen or yard, nor did the rigor of any discipline tame his wildness or repress his inclination to rove. Nearly every attempt to abridge his liberty was anticipated by a nimble bound over and beyond the pale designed for his imprisonment; so that all the efforts of Judge S. to retain him in steady service were unavailing.

These characteristics, then of little moment, have since become the subjects of medical examination, in view of the probable effects of his subsequent imprisonment, as in his veins coursed the blood of a race that has never been restrained without difficulty—never incarcerated without mental disaster.

After leaving the family of Judge S. he lived with and labored for sundry persons in and about Auburn, among whom were Messrs. Cadwell, Jones, Seeley, Curtis, Andrus, Smith, and Depuy, his brother-in-law, by most of whom he was regarded as honest and faithful in the execution of particular commands, but generally unsteady, and at times intemperate. For short periods he served as a waiter at several hotels and in private families prior to 1840, but those periods were always brief. Although taciturn and morose at times, he was ever ready for a frolic or a dance, and according to the testimony of his sister, "he acted very smart on such occasions."

But so little of popular favor has been accorded to the negro race since the abolition of slavery in New-York, that not much information in detail can be gathered of one so obscure as Freeman was, prior to his arrest and imprisonment for the offence of another man—for a crime, which it is conceded on all hands, he never committed. Hence, he can be but faintly traced as he passed along through the vicissitudes of his early life to the occurrence which resulted in his imprisonment on a charge of larceny, and introduced him to public notice as a felon.

In the spring of 1840, whilst Freeman was living with Depuy, his brother-

in-law, a Mrs. Martha Godfrey, of the town of Sennett, some five miles distant from Auburn, lost from her stable a horse, which she alleged to have been, and which doubtless was, by some one, taken feloniously. For some cause, Freeman was suspected and arrested, but protested his innocence, and upon examination before Robert Cook, Esq., a magistrate, he was discharged. Some weeks afterward, the horse was found in the county of Chemung, whither it had been taken and sold by a negro, as was alleged. The description given was supposed to answer to one Jack Furman, another negro, who thereupon was arrested, examined, and committed to jail for want of bail, to await an indictment by a grand jury. But knowing that Freeman had been once arrested for the theft, Jack took occasion to renew the charge, and to insist that he should be arrested again. This was finally done in June, and from that time, with the exception of a few days when Freeman was absent, until September following, both of them were detained for the same offence.

In July, Freeman broke the lock of his cell, and with another prisoner escaped from the jail. His fellow was at once re-taken, but Freeman made rapid flight to the woods, and was not captured until two weeks afterward, when he was found at Lyons, where he had formerly lived. When arrested, he protested his entire innocence, and excused his escape by the expression of his fear that Jack Furman would swear him into the State Prison. It was known to the jailer that he had offered to do so upon the condition of his own release.

In September he was indicted, as well for breaking jail as for the larceny charged against him. He was also, at the same term of court, tried and convicted, mainly upon the oath of Jack, who gave his evidence for the people in exoneration of himself. Three witnesses only were sworn on his trial: Mrs. Godfrey, to the loss and recovery of her horse; Mr. Doty, a neighbor, that he saw a negro on the horse the night it was stolen, and Jack, that he went with Freeman to the stable and saw him take it. The jury, under charge of the court, found him guilty, whereupon he was sentenced to be confined in the State Prison at Auburn, at hard labor, for the term of five years. Jack received, as the reward of his perjury, a discharge.

But as it soon became reasonably certain that Freeman was at another place all the night when the larceny was committed, and as Jack was soon thereafter convicted for a similar offence, the public mind at once exonerated Freeman from the felony for which he had been convicted. He was doubtless innocent of the offence.

The conviction of Freeman, therefore, appears to have been unjust, and to have had a powerful influence upon his mind when in prison. He repeatedly asserted his innocence to the constables, justice, and jailer, before, and to the keepers of the prison after, his conviction, and vainly urged his release. Unlike most negro convicts, he never became in any degree reconciled to his condition, until he had resisted the authorities of the prison and received a

blow, which, to use his own expression, "knocked all the hearing off, so that it never came back to him again."

On being reprimanded by the contractor in whose shop he was placed, he said he had "done nothing worthy of confinement—that Captain Tyler, the keeper, was going to whip him, and he did not want to be punished when he did'nt deserve it." To James E. Tyler, the keeper, he made similar complaints, and at all times, when he had the opportunity, he protested his innocence and complained of his imprisonment. Not doing as much work as he was deemed capable of performing, he was ordered to do more, under the penalty of the lash. This not having the effect desired, he was called up to be flogged, when a scene occurred that was related by Tyler as follows: "I called him up and told him I had done talking to him—I was going to punish him. I told him to take his clothes off. I turned to get the cat, and received a blow on the back part of the head from him. It started me a little. As I looked around, Bill struck me on the back—I kicked at him and knocked him partly over—perhaps he fell clear down. He jumped up, went across the shop, took up a knife and came at me. I took up a piece of board lying on the desk, went down and met him. It was a basswood board, two feet long, fourteen inches wide and half an inch thick. It was a board one of the convicts had laid on my desk, on which was a count of lumber, planed on both sides. When I came in reach of him, I STRUCK HIM ON THE HEAD, flatwise—split the board, and left a piece in my hand four inches wide."

He was then punished and sent to his work, but afterwards appeared downcast and sad, and, as the witnesses testified, "went about with his head down." His hearing was dull before, but heavier afterwards; and many have supposed that his auditory organs were then injured, notwithstanding the confident opinion of Tyler "that the blow could not have hurt him." Certain it is that he was afterwards very deaf, and that the deafness continued to increase while he remained in prison; and upon a post mortem examination it was found that the drum of his left ear had been broken, and that his left temporal bone was carious and diseased.

Freeman remained in the State Prison until the expiration of his sentence, but was more stolid and dull after than before his difficulty with Tyler. He had before been allowed to attend the Sunday school, but after this occurrence that opportunity was, for some reason, denied him. Some of the police appear to have considered him too dangerous for such a liberty—some, that by his resistance of authority he had forfeited the privilege—and others that he was not susceptible of any instruction. Which consideration prompted the denial to him of the advantages of the Sunday school is not known. He never was permitted to go there afterwards.

After an unsuccessful effort to exact from him a prescribed amount of labor in the hame shop, he was given up by the contractor and permitted to do miscellaneous work in the yard. In the fall of 1843 he was employed in the dye house, where Captain William P. Smith was foreman. Smith con-

sidered him then "a being of very low, degraded intellect; hardly above a brute, and treated him accordingly," (vide his testimony;) "that he was a man of very quick passions; would fly in a moment at any thing he thought an insult;" that another convict changed the position of a pole on which yarn was hung, for which he fought him, was reported for so doing and was flogged; that he had greased a pair of shoes and set the same on a pile of wood, which another convict caused to fall, when Freeman struck him, and for which he was also flogged. After this he went to Captain Smith, crying, and represented that he had been flogged very severely; that a hole had been cut between his ribs which he could lay his fingers in. He also told Captain Smith that the flogging pained him so at night that he could not sleep.

As to his capacity at this time, it appears from all the witnesses sworn on his trial, that it was very limited; that commands had to be repeated several times before he could understand them sufficiently to obey them. Some represent him as being weak and child-like; some thought him a little shattered, but all were willing to keep him at work at such things as he had capacity to execute. In this condition he remained until the expiration of his sentence, in September, 1845.

His mother never saw him during the time he was in prison, but occasionally sent some one to see him, that his condition might be reported to her. This was generally done by John Depuy, her son-in-law, who says he saw William five times during his confinement; that his mother had heard that somebody had struck him on his head and that it was going to kill him, whereupon he went in to see him. He testified on the trial, that he found Freeman with a knapsack on his back, walking back and forth in the yard; "that he would walk a little way and turn round." Depuy considered him deranged, and so told his wife and mother-in-law on his return.

On the morning when Freeman's sentence expired, Depuy went to the State Prison for him and took him home. Thus ended his imprisonment on the charge of stealing Mrs. Godfrey's horse.

During the fall and winter he lived most of the time with his brother-in law, but occasionally at the houses of other colored people. He was sometimes employed at sawing wood, but was generally sluggish, stupid and indolent. He talked but little, and gave but a confused relation of occurrences in the prison when he was there. The injustice of his imprisonment and the rencontre with Tyler seemed to be uppermost in his mind, and formed about the only topics of his conversation when he said any thing. He frequently inquired for Jack Furman, and upon being told by Depuy that he was a convict in the State Prison, replied, "he had not seen him." He said he had been there five years for nothing, and he wanted pay for it.

After enquiring for magistrates, he told Depuy that he must go down and get a warrant for the folks, and that they must pay him; that he could not make any gain so, and could'nt live. He then applied to two magistrates,

Bostwick and Paine, for warrants against the folks that sent him to prison, but the request was refused. He then returned to Depuy's, where he said that he could'nt do any thing with them; that he could not get any thing; would have to lose it all. After working about at sundry little jobs of work, from which he received but a trifling compensation, he went to board with a colored washer-woman named Mary Ann Newark, at a place called New Guinea, about a mile south of the village of Auburn. She had known him before he was imprisoned, and had seen him in the street after his discharge, but she was apparently unnoticed by him. She took him to board, that he might help her carry her baskets of clothes to and from those in the village for whom she worked. Her account of him is, that he did not hear very quick; would put down his ear and want her to speak louder; that he never said much, and spoke only when spoken to; that he never asked any questions himself, and answered those put to him very briefly.

Whilst living with her, and between the hours of six and seven o'clock on the evening of the 12th day of March, 1846, William went away, she knew not whither, nor for what purpose.

On the western border of the Owasco lake, in the town of Fleming, and about three and a half miles south of the village of Auburn, there lived a very respectable and worthy farmer, whose name was John G. Van Nest. He was a man of good education, of considerable wealth—had held various offices of honor and profit—was extensively known, and highly esteemed by all who knew him. He was very exact in all his dealings, correct in his deportment, and exemplary in all his varied relations to the society of which he was a member, and to the community in which he lived. His family consisted of Mrs. Sarah Van Nest, his wife; Mrs. Phebe Wyckoff, his mother-in-law; Julia Van Nest, his daughter; Peter Van Nest and George W. Van Nest, his sons, the latter about two years old, and Helen Holmes, a young woman who lived with them in the capacity of help; there was also at his house, on the night of the 12th of March, a Mr. Van Arsdale,—all being respectable and very estimable persons. Any violence, therefore, to such a family, could not have failed to arouse the community far around, and to have caused the offender to be condignly punished if within their reach. And when popular indignation for a trespass upon the rights, the property or the lives of worthy citizens does not overleap the boundaries of that propriety which the law establishes, it betokens well for the character of the persons injured, and the virtue, the morals and the peace of society.

As the family of Mr. Van Nest were about retiring to rest on the 12th day of March, a tragedy was enacted at his dwelling which is without a parallel in the history of crime; an event that was horrid beyond all description, dreadful in its character and shocking to the community. Without the least premonition of, or provocation for the act, John G. Van Nest, Sarah Van Nest his wife, and George W., their son, were slain and left weltering in their gore; Mrs. Phebe Wyckoff mortally and Van Arsdale severely

wounded, by the hand of an assassin. The occurrence happened at about half past nine o'clock, when all the family had retired to their rooms for the night, except Mr. Van Nest, who was in his sitting room, and Mrs. Van Nest, who had stepped into the yard in rear of the dwelling. At that point of time, Mrs. Van Nest received a mortal wound inflicted with a knife, guided by a negro, and shrieking, ran to the window of the room occupied by Helen Holmes, who opened the door in that part of the house, through which Mrs. Van Nest came in and died. Hearing the shriek of his wife, Mr. Van Nest at once opened the door, when he received a fatal stab from the same hand, and fell without a struggle. Mrs. Wyckoff, in her attempt to escape, received a mortal wound as the assassin passed to the stairs ascending to the chamber. After stabbing an infant boy who was sleeping near them, he attempted to ascend the stairs, when he encountered Van Arsdale, whom he severely wounded. But after a severe struggle, the assassin was expelled from the house, and procuring a horse from the stable hard by, he mounted, and made rapid flight from the scene of desolation and of blood. That horse soon failing him, he procured another, with which he continued his flight to the county of Oswego, a distance of forty miles, where he was taken the next day by the officers in pursuit. He was found to be William Freeman.

The officers returned him, fettered and bound, to the house of Van Nest, to which the magistrate repaired to take the proof of his identity and guilt, from the lips of the survivors. Tidings of the awful affair having, meanwhile, been widely spread, the inhabitants of the country far around rushed, en masse, to the scene of slaughter. After beholding the lifeless forms of the father, mother and son, and at the same time learning that Mrs. Wyckoff had died from her wounds at a neighboring house, they were so shocked and exasperated, that an irrepressible and tumultuous indignation burst forth from every mouth, and nearly overbore the authorities who had in charge the wretched assassin. The excitement of the occasion was unprecedented in this section of the State. It was thought the course of justice marked out by the law was too slow for the punishment of such an offender—that the death of the family of Van Nest must be at once avenged. The populace sought his blood, and madly and loudly called for the victim of their fury that they might tear him to atoms. The gibbet, rack and flame were each proposed for his immediate destruction. The rope and the lasso were ready for snatching him from the officers of the law. But by a diversion artfully contrived by the officers, they escaped with their prisoner, and although pursued, succeeded in lodging him in the county jail.

Such an extraordinary excitement of such an immense concourse of people, as might have been expected, did not immediately subside. The crowd dispersed only to fan the flame in other quarters. The blood of wives and children ran cold at the recital, so that whole families, from the prattling child to the tottering grandsire, spontaneously joined in the popular indignation.

A jury in another capital case (that of Henry Wyatt) having disagreed about the sanity of a prisoner, that was brought into the excitement and vehemently discussed in connection with this. Judges, jurors and counsel were alternately upbraided, reproached and defended. The lives of the people were considered in jeopardy. The mention of insanity in connection with Freeman was rebuked as presumptuous, and dangerous to the safety of the community.

Next in the order of events, came the funeral obsequies over the bodies of the slain. That was truly a mournful, a thrilling occasion. The presence of the four encoffined dead; the deep and pervading anguish of the mourning relatives; the mighty concourse of anxious friends and acquaintances in attendance; all contributed to render it as extraordinary as was the event which had occasioned the exercises. The sermon was delivered with great effect by the Rev. A. B. Winfield, pastor of the church of which the deceased were members, from 1 Phillipians, i. 21; concluding with the following peroration:

"If ever there was a just rebuke upon the falsely so-called sympathy of the day, here it is. Let any man in his senses look at this horrible sight, and then think of the spirit with which it was perpetrated, and, unless he loves the *murderer* more than his *murdered victims*, he will, he must confess, that the law of God which requires that 'he that sheddeth man's blood *by man shall his blood be shed*,' is right, is just, is reasonable. Is this the way to prevent murder, by sympathy? It encourages it. It steels the heart and nerves the arm of the assassin!

"But capital punishment is said to be *barbarous*, *cruel*, *savage*. What does this amount to? Why, that God *commands* that which is *barbarous*, *cruel* and *savage!* Most daring blasphemy! But all punishment is for the good of the culprit, or else it is tyrannical! The wretch who committed this horrid deed has been in the school of a State Prison for five years, and yet comes out a *murderer!* Besides, it is an undeniable fact, that murder has increased with the increase of this anti-capital punishment spirit. It awakens a hope in the wretch, that by *adroit counsel*, law may be perverted, and jurors bewildered or melted by sympathy; that by *judges infected with it*, their whole charges may be in favor of the accused; that by the *lavishment of money*, appeals might be multiplied, and, by putting off the trial, witnesses may die. Why, none of us are safe under such a false sympathy as this; for the murderer is almost certain of being acquitted! If I shoot a man to prevent him breaking into my house and killing my family, these gentlemen will say I did right. But if he succeeds, and *murders* my whole family, then it would be *barbarous* to put him to death! Oh, *shame*, *shame!* I appeal to this vast assembly to maintain the laws of their country inviolate, and cause the murderer to be punished."

However inappropriate such an appeal may have been for the day and occasion, it was nevertheless responded to by the excited auditory, and a

copy thereof solicited for publication. The request was granted; the sermon printed, and thousands thereof gratuitously circulated throughout the body of the State. The press announced the murder in glaring, startling capitals, and did its part in awakening the community to the awful consequences of sympathy for such an offender. Nor was this excitement local. As the tidings of the affair went forth in the public prints, the people of the whole State, in very considerable degree, partook of the feeling that pervaded the masses in Cayuga.

Such had been the tragedy; such the excitement; such was the condition of the public mind, when, at the May term of the Cayuga general sessions, four indictments for murder were found against Freeman, and presented by the grand jury. That for the murder of John G. Van Nest, being the one upon which he was tried, was in the words and figures following.

THE INDICTMENT.

At a court of general sessions of the peace, held at the court house, in the village of Auburn, in and for the county of Cayuga, on the eighteenth day of May, in the year of our Lord, one thousand eight hundred and forty-six, before Joseph L. Richardson, Isaac Sisson, Elisha W. Sheldon, Esquires, and others, their associates, judges and justices, assigned to keep the peace in the said county of Cayuga, and to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county, committed:

Cayuga County, *ss:* The jurors for the people of the State of New York, in and for the body of the county of Cayuga, to wit: Samuel S. Coonley, Ezra Willits, Phineas F. Wilson, William Beach, Henry H. Cooley, William Bidwell, James Congdon, Charles Paddock, Leonard D. Harmon, John O'Hara, John A. Carter, Charles Lester, Jacob Cuykendall, Daniel R. Rooks, William Moore, Jacob Sharpsteen, Thomas E. Loomis, good and lawful men of the same county, being then and there sworn and charged upon their oath, present: That William Freeman, late of the town of Auburn, in the county of Cayuga, laborer, on the twelfth day of March, in the year of our Lord, one thousand eight hundred and forty six, with force and arms, at the town of Fleming, in the county aforesaid, in and upon one John G. Van Nest, in the peace of God and the people of the State of New York then and there being, feloniously, wilfully, and of his malice aforethought, and from a premeditated design to effect the death of the said John G. Van Nest, did make an assault; and that the said William Freeman, with a certain knife, of the value of twenty-five cents, which he, the said William Freeman, in his right hand then and there had and held, the said John G. Van Nest, in and upon the breast at the left side of the breast bone, between the third

and fourth ribs of him, the said John G. Van Nest, then and there feloniously, wilfully, and of his malice aforethought, and from a premeditated design to effect the death of the said John G. Van Nest, did strike, stab and thrust, giving to the said John G. Van Nest, then and there, with the knife aforesaid, in and upon the breast at the left side of the breast bone, between the third and fourth ribs of him, the said John G. Van Nest, one mortal wound of the breadth of one inch and of the depth of five inches, of which said mortal wound the said John G. Van Nest then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said William Freeman, the said John G. Van Nest, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, and from a premeditated design to effect the death of the said John G. Van Nest, did kill and murder, against the peace and dignity of the people of the State of New York.

LUMAN SHERWOOD, Dist. Att'y.

(A true Bill.)

SAMUEL S. COONLEY, Foreman.

On the presentation of the above, with the other indictments against William Freeman, and on motion of the district attorney, it was ordered by the said court of general sessions that the said indictments be sent to the court of oyer and terminer for trial.

Henry Wyatt and William Freeman both being in jail on charges for capital offences, a commission was issued by the Governor for the holding of a special court of oyer and terminer by the Hon. Bowen Whiting, and the county judges of Cayuga, on the first Monday of June next thereafter, at the court house in Auburn, for the trial of said prisoners.

THE ARRAIGNMENT.

On the first day of June, 1846, the Hon. Bowen Whiting, with the other judges composing said commission, convened at the court house in Auburn, and then and there opened and held a special court of oyer and terminer. After the usual proclamations, the sheriff was directed to bring in William Freeman for arraignment. The prisoner having been brought to the bar, L. Sherwood, Esq., district attorney, proceeded to arraign him upon the several indictments for murder, whereupon the Hon. William H. Seward appeared in court and tendered in behalf of the prisoner a PLEA OF INSANITY, upon which the district attorney took issue.

His honor, the presiding judge, then remarked, that as the statute expressly declared that no insane person can be tried, the issue which had been joined upon the mental condition of the prisoner must be disposed of before any further proceedings could be had on the indictment. How that

issue was to be determined, he was not, without some reflection, prepared to decide. A plea of insanity went to the right of the court to try the prisoner during the continuance of that disability, if it in fact existed. The court, therefore, must adopt such a method for determining that issue as would be satisfactory to the judges composing it. Until he consulted with his brethren, he was unprepared to announce the method to be adopted. As it was a matter resting in the discretion of the court, he would hear the views of counsel, if they desired to make any suggestions.

Mr. Sherwood observed, that in his opinion the court might determine the present sanity of the prisoner, either by a personal inspection and examination, with or without the aid of physicians, or by a jury to be empanelled for that purpose. He was unable to say what method the court would prefer, or which would be the most satisfactory. As he had, from observation of and conversation with the prisoner, satisfied himself that he was not insane, it appeared to him that a similar examination might satisfy the conscience of the court.

Mr. Seward regarded insanity as a fact that should be determined as other questions of fact are required to be, in criminal cases. In that view he suggested a trial of the issue by a jury. It was important to the people as well as the prisoner, that such an investigation be made as shall be entirely satisfactory to the court and to the public. If the prisoner be insane, as the plea alleges, he ought not to be required to answer; if he be sane, he should be tried. Whilst the examination of the district attorney had convinced him that Freeman was sane, his (Mr. Seward's) examination had convinced him that he was insane. Others, with equal advantages for arriving at the truth, corroborated his opinion. If a trial by jury were the right of a sane man, ought it not to be accorded to one who cannot hear you nor make any election in the premises himself?

The court reserved the question for advisement, and ordered the arraignment to be suspended, and the prisoner to be remanded to the county jail.

DECISION OF THE COURT.

On the twenty-fourth day of the same month, the court announced its determination to inform its conscience concerning the insanity of the prisoner, by the verdict of a jury, and thereupon directed the Clerk to draw such jury from the box containing the names of jurors summoned to attend said court, and to empanel the same for the trial of that issue.

Hon. John Van Buren, attorney general, and Luman Sherwood, Esq.,

district attorney, appeared as counsel for the people; Hon. William H. Seward, David Wright, Christopher Morgan, and Samuel Blatchford, Esqrs., took their seats as counsel in behalf of the prisoner.

THE JURORS AND THEIR EXAMINATION.

Ezra Stone was then drawn by the clerk as a juror, and answering, was thereupon challenged for principal cause by the counsel for the prisoner. After being sworn to answer, &c., touching his indifference, &c., he testified as follows: I reside in Cato. Have not formed any opinion concerning the sanity of the prisoner. Have heard the subject spoken of. Have seen him in his cell, but have formed no opinion. Have no impressions on my mind either way.

Question. Have you not formed and expressed a fixed and deliberate opinion that the prisoner at the bar is guilty of murder? Objected to by attorney general, and objection sustained.

Q. Have you not formed and expressed an opinion that the prisoner ought to be hanged? Objected to by attorney general, and objection sustained.

The court overruled the challenge for principal cause, and thereupon the prisoner's counsel challenged the juror for favor. Counsellors Hulbert and Andrus were appointed triors, before whom the juror was further examined as follows: I have heard of the murders in Fleming. Saw an account of them. Mr. Ives, of Weedsport, told me about them. Ives told that the prisoner was a negro, and that his name was Freeman. It was said there were others concerned with him. Heard a man, who saw the bodies, give the particulars of the transaction. Think it likely that an opinion was expressed. It was said that there was talk about Lynching him. There was considerable excitement. I have not had doubts of his guilt; of his having committed the murders. Have said that if he was guilty he ought to be punished. Have said he ought to be brought to trial and to justice. I partook of the excitement. I had supposed him sane until I came here. I have heard it asked whether they would not try to prove him morally insane. Don't know as I thought he ought to have been Lynched. I may have said that it might have been as well if he had been.

Q. by the triors. When you testified that you had no doubt the prisoner committed the murders, did you mean to intimate an opinion that he was capable of committing murders, or merely that he had taken the lives of those persons?

Answer. That he took their lives. I knew nothing of his ability.

Verdict of triors—"that they find the juror indifferent upon the issue of insanity."

The prisoner's counsel insisted that the verdict should be whether the juror is indifferent between the people and the prisoner. Whereupon the court remarked that the verdict of the triors was equivalent to that, and thereupon the triors say, that under such instruction, their verdict is that the juror is indifferent.

The said juror was then challenged peremptorily. To this the attorney general objected. The court decided that the prisoner on this issue was not entitled to a peremptory challenge. Ezra Stone was then sworn to try the issue. (1.)

SIMON HAWES was next drawn by the clerk as a juror, and answering, was thereupon challenged for principal cause, and he being sworn, testified as follows: I have seen the prisoner. Have heard the question of his insanity several times spoken of. I saw him in jail this morning. Thompson and Wood, also jurors, were with me. There was a man in the cell with the prisoner doing something. Have made up no mind as to his insanity. Have not much of an impression. Have formed no opinion.

Q. Have you formed and expressed an opinion that the prisoner is guilty of the murders charged against him? Objected to by attorney general, and objection sustained.

The court then overruled the challenge for principal cause, and thereupon the prisoner's counsel challenged the said juror for favor. Same triors as before. The juror being further examined, testified: I have formed an opinion that the prisoner is guilty, if he is the man he is said to be; that he is guilty of the murder of the Van Nest family. If he is the man who killed them, he is guilty, of course. I have formed an opinion from what I have heard and read that he is the man. This has been my opinion since I heard of the affair. My opinion at present is as much of a deliberate opinion as any other that I have formed from reading and hearing. I have read accounts of the murder in the newspapers. I have heard it conversed about often, and have always expressed this opinion. Guess I never expressed the opinion that he ought to be hung. If he is guilty he ought to be hung, and I have formed the opinion that he ought to be hung.

Q. by the court. Have you ever thought about his being insane?

A. Yes, I have thought and said he ought to have a fair trial. I feel indifferent on the question of insanity.

Q. by district attorney. Have you had any means of forming any opinion whether the prisoner is sane or insane?

A. I have not. My mind is open to a fair consideration of the testimony upon that subject. I did not take into consideration his responsibility for his acts, when I said he was guilty of murder.

His honor, the presiding judge, then charged the triors that the question

for them to determine was, whether the juror's mind is in a condition fairly to try this issue of the sanity or insanity of the prisoner; to try whether the prisoner shall be tried on the main issue. He has expressed a belief that the prisoner is guilty of the killing which is charged against him as murder; yet that is not the question now on trial, and we do not see that an opinion on that disqualifies a juror upon this issue. If he has a fixed and deliberate opinion that the prisoner is guilty of the crime charged, he is not disqualified as a juror on this issue, if he has not made up his mind as to the sanity or insanity of the prisoner. Evidence of his opinion of the prisoner's guilt could have no influence in deciding upon the indifference of the juror only as it was evidence of his bias against him, and that if the triors believed that such opinion was evidence of bias against the prisoner, they would find the juror not indifferent.

Verdict of jurors—that he was indifferent; the court deciding that no peremptory challenge would be allowed, Simon Hawes was then sworn to try the issue. (2.)

Ezra Moseman was then drawn, but discharged on his own application, for cause shown on oath.

Andrews Preston was next drawn as a juror, and answering, was thereupon challenged for principal cause, and being sworn, testified: I have formed an opinion that Freeman took the lives of the Van Nest family. Whether it was legally murder or not, I cannot say. If he was of sound mind, I should suppose that it was murder; otherwise, not. I do not know but that his mind is sound. Have seen him in jail and in court, but had no conversation with him. Others had. From what I have seen of him and heard about him, an impression has been made on my mind that he is not insane. I have no prejudice or bias against him, and would be willing to have his insanity tested fairly. I have not had the means of forming a decided opinion on that point.

The court overruled the challenge for principal cause, and the juror was thereupon challenged to the favor. Same triors.

Q. Have you any doubts as to the accountability of the prisoner?

A. I think I should have some reason to doubt his accountability. I suppose him to be a man of very weak intellect, very indeed. I should, however, make a distinction between imbecility of mind and insanity. I heard of the murders; read most and perhaps all that was published on the subject. My mind was not prejudiced by what I read, if I understand the true definition of that word. I understand prejudice to mean the judging before hand, without proper examination. I heard of the attempt to Lynch the prisoner. Don't know but I heard from an eye witness, soon after it occurred. I presume I expressed an opinion upon the subject then, and that was in favor of a strict observance of the law.

The court charged in substance as before, and triors find the juror not indifferent.

JOHN O'HARA was then drawn as a juror, and answering, said that John G. Van Nest was his brother-in-law. He was excused.

ABRAHAM GUTCHESS was next drawn as a juror, and answering, was thereupon challenged for principal cause, and being sworn testified: I have heard of the murders, but never heard any one say that he was insane. Don't know how that is, but my belief is that the prisoner is sane. Shall continue so to believe until the contrary is proved. Have seen him in court, but never looked at him with reference to his insanity. Can't say whether I ever heard that he was crazy, or that he was not.

The court overruled the challenge for principal cause, whereupon the prisoner's counsel challenged the juror for favor. The juror further testified: I have formed no opinion as to prisoner being a murderer. Think he killed the Van Nest family; have no doubt about that. Heard that after Freeman was arrested, there was a vote of the people taken to Lynch him. Did not hear that a halter was taken to Van Nest's house to hang the prisoner with. Never said he ought to be hanged; but have said that if he was a sane man he ought to be hung. I always put in that qualification. The thought of his insanity entered my mind when I read the account of the murder, and I thought that he might have been or might not have been insane. I pondered that in my mind, and I thought whether he was sane or insane, but I came to no particular conclusion. The fact itself of his committing so many murders, raised a doubt in my mind at first about his sanity. I cannot say that I came to the conclusion that he was sane. Don't know but my impresssion was as much one way as the other; but my present impression is that he was sane.

Q. by attorney general. Did you ever see the prisoner until you came to court?

A. No; and never except in court. Never spoke to or with him. Have had no opportunity for making up an opinion whether he is sane or insane. I should believe him sane until I heard something to the contrary. Have no feeling against him.

After a charge, in substance as before, the triors found the juror indifferent. Abraham Gutchess was then sworn as a juror. (3.)

SHELDON GOODRICH was next drawn, and not being challenged, was sworn as a juror. (4.)

HENRY ACKER was next drawn, and answering, was challenged for principal cause, and being sworn, testified as follows: Have heard it said by some that Freeman was insane, and by others that he was not. Have read about the murder in the Cayuga Tocsin. That paper described the murder, the time, and circumstances of it. I take that paper. Never saw the prisoner except in court. Can't say that I have made up my mind. When I heard it, I supposed he was as other men are, with reasonable faculties for the commission of crime. I have some reason to doubt that, as I have heard it contradicted. Have no bias on my mind at present. I think from ap-

pearance of the prisoner that he is rather a weak minded man. I have thought he killed the Van Nest family, and that he was a murderer, unless he shall be proved insane. Have talked about it, but don't know as I have said he murdered the family. Have said I believed he killed them. Have heard of the attempt to Lynch him. Thought he ought to have the benefit of law. Have thought that if he was guilty he ought to be hung. I thought him guilty till I heard of his insanity. Have no opinion on the subject of his insanity, but think if he is insane he ought not to be hung.

The court overruled the challenge for principal cause, and the counsel for prisoner then challenged him for favor. Same triors.

Prisoner's counsel asks that Mr. Goodrich, he being the first unchallenged juror, be sworn as a trior. Objected to by attorney general. Court denies request. Previous testimony read to the triors, and the same charge in substance delivered as before, except that his honor added, that the oath does not mean absolute indifference as to the murder, but only indifference as to the question of present sanity or insanity of the prisoner. The prisoner may have been sane then, but insane now; guilty of murder, yet unfit to be tried.

The triors found the juror indifferent. Henry Acker was then sworn as a juror to try the issue. (5.)

Benjamin Clark was next drawn, and answering, was challenged by counsel for the people, but the same withdrawn and juror sworn. (6.)

Abijah P. Olmsted was next drawn, and answering, was interrogated by counsel; not challenged, but was sworn. (7.)

Samuel Bell was next drawn, and answering to the call, took his seat as a juror. (8.)

Thomas J. Slater was next drawn, and answering, was challenged for principal cause by prisoner's counsel. On examination, juror said: I have seen the prisoner in court since the commencement of this suit. Have heard about him from several persons. Have expressed an opinion that he is sane, and that is my present opinion.

Q. by district attorney. On what did you form that opinion?

A. From his appearance and his preparation of tools for the butchery.

The court decide the challenge well taken.

Martin J. Van Buren was next drawn, and answering, was challenged by prisoner's counsel for principal cause. The juror being sworn, testified: I have not formed an opinion of the prisoner's sanity. Not hearing any thing to the contrary, I had supposed him competent to commit murder until I came here. Have thought of it a good deal since. Can't say that I should judge correctly, but it looked to me like a very curious circumstance that a sane man should murder a whole family.

Challenge withdrawn, and juror sworn. (9.)

Cyrus H. Davis was next drawn, and not being challenged by either party, was sworn to try the issue. (10.)

JOHN E. KRUM was next drawn by the clerk, and answering, was challenged for principal cause; but the same, on brief examination, was withdrawn. He was then sworn. (11.)

DARWIN CADY was next drawn, and answering, was challenged for principal cause, and being sworn, testified: There has been a good deal of excitement in my neighborhood about this murder. I have formed an opinion that prisoner is guilty. I saw prisoner stand up to be arraigned, and thought from the way he managed that he was not very insane. The circumstances of the murder prove that he is not insane, and that is the bias of my opinion. I should want testimony to remove that opinion. If he is deranged I cannot see it in his eye. Don't feel exactly towards him as I would towards one not accused of crime.

Set aside by consent of attorney general.

WILLIAM ROSS was next drawn, and answering, was challenged for principal cause, and having formed an opinion, was set aside.

JOHN VOSLER was next drawn, and answering, was challenged for principal cause by the prisoner's counsel, and after being sworn, testified: Heard the plea of insanity put in. Have seen prisoner in court. Was never in the jail. Have heard it remarked that the plea was merely a pretence. Have heard it ridiculed frequently. Have heard that he was, and also that he was not insane. I have looked at him, but cannot tell whether he is insane or not. I have seen no appearance of insanity. My impression is that the plea of insanity is groundless. Think so from his fixing his knife, taking the horse, time of night, and all I have heard. In my mind this man is guilty of murder, and that he is responsible for his acts. If he sharpened the knife, committed the murders, and then took a horse and run away, he ought to be responsible.

The court sustained the challenge.

JAMES H. WOOD was next drawn by the clerk, and answering, was challenged for principal cause by the counsel for prisoner, and being sworn he testified: I have an opinion that four persons were killed, and that whoever did it was a murderer. Heard that Freeman was arrested for it. Have heard very little about it; have some. Heard that knife was sharpened before hand, and that he went and stabbed all of them; and that he then took a horse and cleared, and got to Fulton. The impression on my mind is that Freeman was the man, and if the facts are so I know of no reason why he is not accountable. Think I have never heard the facts contradicted. Have heard the counsel censured for putting in a plea of insanity for the prisoner. I think from the precaution he took, and the escape he made, he is an accountable being, and that is my mind now. I presume he is sane.

The court overruled the challenge, whereupon the prisoner's counsel challenged the juror for favor, and appointed counsellors Hulbert and Andrus triors.

On the preceding evidence to them read, the triors found the juror not indifferent.

JOHN CONGER was next drawn, and answering, was challenged for principal cause, and being sworn, testified: Have seen the prisoner in court. No where else. Have read part of the facts and circumstances, and have heard them talked over. Concluded that he was guilty of murder, if what I had read and heard was true. Do not know that the question of sanity arose in my mind. I took it for granted that it was an atrocious murder. I never heard the prisoner's sanity questioned until he was brought into court. Have looked at him with reference to his sanity. I was a good deal disappointed on seeing the man, for I had supposed him an athletic, ferocious man. I have not any opinion about his sanity, yet the bias of my mind is that he is now responsible, saying nothing about what I have heard here. See nothing in his appearance to change the impression. He don't appear, however, to be a man of any knowledge.

Challenge withdrawn, and juror sworn to try the issue of insanity. (12.)

Court then adjourned for the day.

TRIAL OF THE QUESTION OF INSANITY.

IN COURT, June 25, 1846. Present, judges and counsel as yesterday.

On a call, the jurors decided competent to try the issue upon the plea of insanity, responded, and entered the box, to wit:

1. EZRA STONE,
2. SIMON HAWES,
3. ABRAHAM GUTCHESS,
4. SHELDON GOODRICH,
5. HENRY ACKER,
6. BENJAMIN CLARK,
7. ABIJAH P. OLMSTED,
8. SAMUEL BELL,
9. MARTIN J. VAN BUREN,
10. CYRUS H. DAVIS,
11. JOHN E. KRUM,
12. JOHN CONGER.

MR. WRIGHT, for the prisoner, then opened the case to the jury. Whilst he was impressed with the belief that the prisoner was insane, he was not without information that others differed with him in opinion. The circumstances of the massacre, however, were themselves indicative of insanity rather than of depravity. There was such an absence of motive on the part of the prisoner for the commission of an act so dreadful and revolting, that the first mention of the case awoke in his mind suspicion of insanity. With others, he had been confirmed in that impression after seeing the prisoner, and learning more of his history and behavior. He had heard that insanity was hereditary in his family; that being predisposed to that disease, some of his ancestors had become insane for causes apparently trivial; that Freeman had himself been imprisoned for another's crime, and had been subjected to

the lash for pretended offences. He had heard too of the blow which had injured his hearing, and he had seen him in his cell, deaf, indifferent to his fate, and unconscious of danger. He had observed his vacant stare and idiotic smile. Whilst he was shocked at his deeds, he was moved with pity for his condition. He believed him a proper object of sympathy rather than of prejudice and indignation. At the request of Gov. Seward he had been assigned by the court as counsel in his behalf. An unsought responsibility now rested upon him as counsel; a responsibility that was akin to that resting upon them as jurors. It was a responsibility that must be borne in the discharge of his duty, without fear, favor, or the hope of any reward, save that which would arise from seeing justice dispensed and the law vindicated. He and they must dispel from their minds every semblance of prejudice, and proceed to inquire whether the wretched prisoner at the bar be a sane or insane man. It was an investigation that would require time, labor, patience and care. The prisoner's counsel have, in the honest discharge of their duty, deemed it just to plead for him a plea that he cannot understand. As little did he (the prisoner) understand the nature of this investigation or the proof to be made. He is here because the law requires it; not to dictate a defence of which he is as ignorant as the posts which support the dome under which you sit. What is done by us, comes from no agency of his, but, from the dictates of conscience and the promptings of humanity. We ask, then, your best attention whilst we spread before you the condition of his mind by the testimony of witnesses, remembering that human life probably hangs upon the issue.

Ira Curtis was then called as a witness on behalf of the prisoner, who, after being duly sworn, testified: I reside in Auburn; am fifty-two years of age, and by occupation a merchant. I know the prisoner, and am decidedly of opinion that he is a part of the time an idiot; both idiotic and insane. My opinion is formed from talking with him. At one time I would think him insane, at another that he was an idiot. I first saw him some years ago. I employed him about the Western Exchange; the kitchen and yard. If he had any capacity, I was unable to ascertain it. He was of no use to me; if I sent him for any little thing five rods, he would be just as likely to bring me something else. He was a dull, morose, stupid, stubborn boy. I have talked to him in his cell; saw him first on first day of June instant; went into his cell and found him in a tremor, wonderfully agitated. I mentioned to him that they were going to take him out to hang him. He gave me to understand that they were going to kill him. I asked him if he knew they were going to take him out to try him. He said he supposed to kill him. I said no; that they were to take him out to have a trial; a fair trial. I said this to allay the fear he was laboring under.

I asked Freeman if he could read. He said he could. About that time Mr. Austin, a clergyman of this village, came into the cell where we were. He took up a testament that was laying there, opened it, handed it to Free-

man and asked him to read in it. He undertook to do so, and commenced by repeating the words, O, Lord, Jesus Christ, Almighty, mercy Moses, and continued in the same way, but sometimes using words that I could not understand and which I doubt were to be found in any language; certainly not in the English. He used some proper English words, but others were not. They were words that I never heard before, and probably never shall hear again. I took the book from his hand and said to him, "you do not read right." He replied that he did. I looked at the place where he was pretending to read, and found it was the chapter beginning with, "In those days came John the Baptist, preaching in the wilderness," &c. I said again to him, "you cannot read." He said, "yes I can." I said, "you don't read right." He said, "yes I do."

Finding that he could not read in the Testament, I took from my hat a leaf of a Bank Note Detector, and pointed to the word "admirable" that was upon the leaf, and asked him what it was. He looked up with a silly expression, and said "woman." I said, No it is'nt. He said, Yes it is. I then put the point of my knife to the word "Thompson," for it was Thompson's Bank Note Detector, and said, "What is that, Bill." Cook, said he. I then directed his attention to a capital A, which he called A, and he also called the letters to E correctly. Mr. Austin asked me to tell him to count. One or both of us did so request him. He said he could count, and commenced counting his fingers. He counted to "five" and hesitated; and again when he got to "eleven" and "thirteen," and at a number of places. When he got to twenty, he began one, two, three, &c., and kept on to seven, and from that went to eighty. Next he got in sixty-six and seventy-two before I stopped him.

During all this time he was in a tremor from head to foot. Finding he could not count correctly, I entered into a conversation with him, about his going up to the Lake. I asked him what he went up to the Lake for; to which he replied that he did not really know what he did go for; as if he had no particular object in going. I asked him how far he went. He answered, quite a piece, or something like that. I asked him where he stopped, or if he stopped in any other house. He said he stopped once at a house beyond. I inquired what for. He said to get a drink of water. I asked him what he went into the other house for. His answer amounted to this: that he did not know. I asked how he came to kill those folks. He said he did'nt know, or "Oh, I don't know." I asked him if he was after their money. He said, "No; didn't know they had any." I asked if he knew the family. He said, No. I asked how he came to kill that child. Here he exhibited some feeling. He answered, "They say, I know, I killed a child; but Mr. Curtis, no, I did'nt; I never killed a child." I asked him what he killed the others for. "Why," said he, drawling, "you know I had my work to do." I said, nonsense, don't talk so foolishly; and repeated the question loud and distinct; to which he answered, "Well, I don't know; can't tell."

I asked him if he knew the man, or had any thing against him. He said No, he didn't know him, nor know who lived there. He said he thought it was time to begin. Said he did'nt go in to kill them; thought it wasn't time to begin yet. I asked him if he went in to murder them. He said "No, I thought it wasn't time to begin." He spoke about having worked for the State five years, and had not got his pay; that they had got to pay, or somebody had got to pay him. I felt that there was no attempt on his part to deceive. I have no doubt that he was really sincere in what he said. I have no doubt of it. What I saw of him gave me the impression that he was crazy, or was a fool, or both.

Cross Examination.—When I asked him what he killed those people for, he said, You know that I have worked five years for nothing, and they have got to pay; or, I have not got my pay for it. He did not live with me long. I did not suspect he was crazy at that time; thought him more knave than fool then; that he was capable of doing better than he did. When I set him at any thing, he would almost always do it wrong. I take it for granted, a person I employ has common sense; if not I don't employ him; and that was my impression about this man. Can't say how many times I saw him after he came from prison. I have recollection of having seen him once or twice. Can't recollect any particular time or place, but am satisfied I was in the habit of seeing him from time to time; possibly as often as once a week. I knew him by name, and have no doubt that he knew me. Never spoke to him, or he to me, after he went to prison. I recollect nothing of him since he left me, except his peculiar cast of countenance. Never thought of asking myself the question whether there was any difference in him. Took no notice. I think he was not deaf when he lived with me first. I never punished any body that I hired; never punished or reproved him when in my employ. He did not learn to read while he lived with me. I doubt whether he attended any church or any school. I attend the Universalist church, and the Rev. J. M. Austin is our clergyman. I think his education is fair, yet I never asked him whether he was a graduate. I should think his education was fair and decent. Have heard him quote Greek and Latin, but can't say as to Hebrew. I don't understand any language myself but the English, and hardly that.

I had kept away from Wyatt and the negro until the Monday when this court commenced. On the Sunday preceding, I was told that I would probably be called as a witness in this case, and I determined then to go and see him.

On Monday morning Mr. Austin came in to my store, and I told him about my determination. He said he would meet me at Dr. Robinson's office and go with me. One of us named the hour. When I went, he was not there, so I kept on to the jail, where he came ten or fifteen minutes after. It was neighborhood talk when he was in the State Prison, that he

was called crazy. He was called Crazy Bill. I had heard that some called him crazy before I went to the jail; some said he was a fool.

My object in going to the jail was to see him, having almost forgotten him. After seeing him I talked about him, and when I heard men say that he ought to be hung, I would say, you might as well hang a dog. I did not know as I was to be called as a witness as to his state of mind. I knew I was to be called upon to testify as to the facts; not to any particular thing.

I afterwards told Mr. Seward of my interview with the prisoner. When I went to the jail I went to find out all I could about Freeman. While there, Mr. Austin in a low tone of voice said to me, "he can't read; he thinks he can, but cannot." That difficulty was all solved when I remembered how little children read when a book is handed to them before they have learned to read. I did not discover any change in him. When he tried to read, he used a great many strange words. I would as soon expect a pig to utter Greek and Latin or Hebrew, as for him to do it.

Q. Did it never occur to you that he was trying to impose on you, to get up the plea of insanity?

A. It did occur to me.

Q. Was it not possible that with his appearance of insanity he was attempting to play off such a game?

A. The thought vanished in a moment. There was too much before me.

Q. Are you confident that he cannot read at all?

A. I am that he cannot read a sentence, and yet he can say the alphabet correctly.

Q. From your own knowledge can you say that he cannot read?

A. I cannot say from my own knowledge that he cannot read, except as I have before testified.

Q. Did you know that a plea of insanity was to be interposed for him?

A. I presumed he would set up insanity or idiocy.

Q. Had you known that he was about putting in a plea of insanity, would it have altered your opinion of his sincerity?

A. I don't think it would. I have no doubt of his sincerity; that he labored very hard to try to make us believe that he knew something, and did not know any thing.

Q. What was the condition of his mind when he lived with you?

A. He was stubborn and playful, and when told to do one thing he would do another.

Q. When he was pretending to read in the jail, did it not occur to you that he might know better?

A. The thought occurred to me that he ought to know better, and might know better. I mentioned so to Mr. Austin, and others afterwards, I think.

Q. Had Mr. Austin visited the jail before?

A. I suspect he had, and knew more than I did, and left me to get along with the prisoner the best way I could.

Q. Did not Mr. Austin say to you that the prisoner could not read?

A. Why, I said to him that it was strange; that he certainly could'nt read; and he smiled, and said, "I know that, but he thinks he can."

Q. Did not the prisoner appear to be in a reflective mood?

A. I had an impression that the prisoner did not think much, any way.

Q. Might you not have been deceived as to the prisoner's sincerity?

A. I supposed the prisoner was telling me the truth.

Q. Did you think he appeared differently from what he did when he lived with you?

A. I got the impression that he was not a tenth part as big a fool when he worked for me as when I saw him in jail.

Q. Then you consider him a bigger fool than formerly?

A. You have asked me if I found any change in him. I got the impression that he was a fool, and that impression grew stronger the more I saw of him.

Q. Are you acquainted with the subject of insanity?

A. I don't know any thing about it scientifically. I have seen many cases of it.

Q. Did you not know that he could not read before you gave him the book?

A. No. I did not know only from what he said. He said he could, and I got the opinion that he was honest in thinking so. When he said, "they tell me I killed the child, but, Mr. Curtis, I certainly did not," I thought he was telling me what he believed to be the truth.

Q. And you think he believed that to be the truth?

A. I think just at that moment he thought he had not killed the child; but I think it likely that he would five minutes after have told another person a different story.

Q. Did he not assign a motive for going to the house of Van Nest and killing the family?

A. He said he had worked five years for nothing, and they must pay him. I asked him several times why he killed the family, before the child was mentioned.

Q. Were the words he pretended to read on the page opened to him?

A. They were not.

Q. Did it occur to you that he might have been taught to do this?

A. No.

DIRECT RESUMED.—I do'nt believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes. He pointed to where he pretended to read a part of the time, and a part of the time he held the book in both hands; he always counted by his fingers. His words were many of them unintelligible. The rest were mixed up.

RE-CROSS EXAMINATION.—The unintelligible words were between the others. His memory did not appear to be good. He recognized some peo-

ple. He knew me. When asked if he knew me, he called me by name. He could count twenty.

Q. Does accuracy in counting depend upon memory?

A. I don't know whether it does or not.

Q. Did you test his memory particularly?

A. I did not; did not try him to see what he could recollect.

MARTHA GODFREY was next called and sworn as a witness for the prisoner, on the plea of insanity interposed in his behalf. She testified as follows: I reside in Sennett, and have seen the prisoner. He came to my house last March, at two o'clock P. M., and before the murder of the Van Nest family. He came in and sat down, and wanted to know if this was the place where a woman had a horse stolen five years ago. I told him it was. He then said he had been to prison for stealing it; but that he did not steal it. I told him that was something I did not know any thing about; that he had been tried and found guilty of it, and sent to prison. He seemed deaf, and complained of being so hard of hearing that he could not hear. He wanted me to get very close to him and speak very loud. One of my neighbors just then came in, and I told him to talk to Freeman, for I could not. It was Joseph Johnson that came in. He asked Freeman what he wanted. He did not make much of an answer, but said he did not know, and sat awhile. Mr. Johnson asked whether he wanted the horse, or what he did want. He did not make any answer, but sat there quite a while. I then asked him if he wanted any thing to eat. He said he did'nt know. I however gave him some cake to eat. Johnson spoke to him again, asking him if he wanted the horse. He sat awhile, looked around, smiled, and said he didn't want the horse now. He said he had been to prison for stealing the horse, but didn't steal it; and wanted a settlement. He said he had been to prison five years.

I did have a horse stolen five years ago, and was a witness against Freeman on the trial for stealing it. I did not then know John G. Van Nest, nor any of his family, nor any of the persons in his house when the murder was committed. I never heard that any of them were concerned in the trial in any way. They were in no way related to me or my family. I never heard of them until after the murders were committed. He remained at my house about an hour. The witnesses against Freeman on the trial for stealing my horse, were Marcus T. Doty, and a negro, named J ck Furman, I believe. The trial was in this court house.

CROSS EXAMINATION.—Witness testified that Freeman was at her house at no other time that she knew of; that she never saw him at any other time, except at the court house when he was tried.

THERON GREEN was then called as a witness in behalf of the prisoner. After being sworn, he testified as follows: I have resided in Auburn for eight or ten years last past. I know the prisoner and knew him when he was in the State Prison at Auburn. In 1843 I was an officer in the State

Prison, and had charge of him. I think he was not then in possession of much intellect. As to his sanity, I had rather not give an opinion, as I am not a competent judge of it. He is a singular being; the most so of any person I ever had charge of. He is an imbecile sort of person.

He worked at the forge. He blew the bellows at the fire, and did the striking. We got along with him as well as could be expected. He was a half pay man; did about a half a man's day's work. I did not look upon him as having much accountability for violating the rules of the prison. I never punished him. As a general thing he was slow to move, but would mind me in his way. He was stubborn and sulky. I never discovered any intercourse between him and other convicts. His manner then was about the same as now. I never saw much cheerfulness about him. I once tried to instruct him in reading, but with rather poor success. I could not learn him his A B C's. I made the remark that I did not like to have a man in my shop that could not read nor write, but as to him I had failed.

He violated rules of the shop, for which I would have been compelled to flog other prisoners, but did not flog him. One reason for that was, that I did not think it of any use to flog him. He was an intractable and rather singular sort of a thing, any way. I should think he had a very small degree of intellect or reason. I discovered a change in him while in prison. I don't think him a man that would realize the consequences of killing a person. He is a reckless fellow, or brute, as you may choose to call him. He comes as near a brute as a human being can.

Cross Examination.—Had no opportunity of observing him except while in the stone shop in the State Prison, except that I saw him in his cell sometimes on Sunday. I gave him instructions about doing his work and about the rules of the prison. When at work there were complaints from the blacksmiths that he did not strike right. I have told him to do things, and he would go right back to his old place to work. He generally obeyed when I told him to go of an errand, or to get a pail of water, but not always.

Q. Was he lazy when in prison?

A. He was rather slow.

Q. Why was it that he did not do over a half a day's work?

A. His skill and ingenuity as a workman would not warrant pay for more than a half a day's work.

Q. Was he not lazy as well as slow?

A. I considered him slow, and I guess lazy, too, in his movements.

Q. How did you induce him to obey you?

A. I talked with him about leaving him in his cell.

Q. Did he work steadily, although slowly, when in the shop?

A. Generally he did. I often found him asleep in his cell Sundays, and would wake him up. Sleeping in the cell in the day time was against the rules of the prison.

Q. Do not colored men frequently violate that rule in the State Prison?

A. They are no more likely to violate this rule than others, I think.

Q. You say you think he has a very small degree of intellect or reason. Did you ever make any examination for the purpose of ascertaining the amount of intellect which he has?

A. I never made any particular efforts to ascertain the depth of his intellect. I had evidence enough of that before me.

Q. Was he not regarded as a disorderly convict?

A. He was not ugly. He was a pretty peaceable convict. He kept snug at his work, and minded the rules as a general thing.

JOHN R. HOPKINS was next called, and sworn on the part of the prisoner: I reside in Auburn, and have been nearly nine years engaged in manufacturing. My knowledge of the prisoner commenced with my knowledge of the Fleming murders. When he was lodged in jail, I felt interested to inquire about his previous history. I had understood he was a man of very weak intellect, and was desirous to ascertain how that was, from personal inspection. I went to his cell and conversed with him, a week or ten days after committing the murders. I became satisfied that he is a man of very weak intellect, indeed. I endeavored to ascertain what the powers of his memory were; if he knew me. He said he did not. I could not bring it to his memory that he had ever seen me before. [Mr. Hopkins continued and testified substantially as upon the trial for themurder. See post.]

WILLIAM P. SMITH was next sworn, and testified as follows: I reside in Auburn, and have known the prisoner seventeen or eighteen years; and ever since he was large enough to run about the street. I did not know his father, yet I knew several of the Freemans. Sidney, the prisoner's uncle, is said to be crazy, and has been ever since he left the prison, six or seven years ago. In the fall of 1843 I was foreman in the carpet factory in the State Prison, and Freeman was one of the hands in that shop. I was told by some one there, that Freeman was crazy; but I never saw any thing in him that made me suppose he was insane. I took him on another tact. I considered him a being of very low, degraded intellect; hardly above a brute, and treated him accordingly. He was a man of very quick passions. He would fly in a moment at any thing he thought an insult, or that crossed him in any way. I recollect that one day he had a pair of shoes setting on a pile of wood, which he had been greasing; another man came by, took a stick of wood, and the pile slid, and his shoes fell. He took a stick of wood, hit him a blow, and he was flogged for it. Shoes were nicely done, and by him too. A week or two after that, Freeman got to fighting with another man about the position of a pole of yarn in the dye shop. The man reported him to the keeper, and he was flogged for that. After he was whipped the second time, he came into the office where I was, crying; said he had been

flogged very severely; that a hole had been cut between his ribs, so that he could lay the end of his fingers in.

He did not appear to be deaf at the time. He said the flogging pained him so in the night that he could not sleep. He wanted I should get Israel G. Wood, who, he said, could get him out. His capacity was very limited. [Witness further testified, in substance, as upon the traverse. See the trial, post.]

WARREN T. WORDEN, called and sworn, testified: I saw the prisoner in jail, in April last. I went there by invitation of Dr. Lansingh Briggs. Some previous conversation having suggested to me the question whether he was an accountable being, I had some conversation with him. Doctor Fosgate was there at the time, and a great deal of conversation was had there. I asked the prisoner about killing the Van Nest family; I asked him which door he entered. Think he told me both doors. At one time, he said he went in at the front door; and at another, at the back door. I asked him what he said to Van Nest, when he first went to the stove. He said, nothing. I asked him what they said to him. He said Van Nest said to him, "If you are going to eat my liver, I will eat yours," and he then struck him. I asked him where he stabbed Mrs. Van Nest. He said out doors. I asked him where he stabbed the old lady. He did not give any answer. I asked him if it was in the house. He said it was at the gate. I think he answered "yes," to the question whether he killed Mrs. Van Nest before he went into the house. I asked him why he went away. He said he hurt his hand. I asked that several times, and sometimes he said he could not kill any more.

I also asked him why he took the horse. He said he could'nt kill any more; had hurt his hand. He then asked me what they had sent him to the State Prison for, when he was innocent. He showed physical agitation. He trembled and shook, and at first I thought he was going to cry. He did not, however. I told him he stole a horse, and that was the reason why he was imprisoned. He denied it, and said he didn't steal it. I was there at the jail a long time. To my questions, he usually answered in the affirmative. I asked him what he was in jail for. He said he didn't know. I asked him if he knew what they were going to do with him. He said, No. I then told him that he would be hung; that they would hang him for killing that family, and asked him again if he did not know it. He said, No.

When I told him that he would be hung, he showed no emotion whatever. I came to the conclusion there that he was incapable of judging between right and wrong.

CROSS EXAMINATION.—I have not stated all the conversation, nor all he said. I spoke about his wounded wrist, but did not get from him any information about it. It was dressed by Doctor Fosgate, whilst I was there. He did not seem to give very intelligent answers. I thought his feeling was not acute. He was deaf. He laughed when we laughed, and said, "yes," when we asked him any thing. Have heard of agitation other than physical;

mental. I saw mental agitation in his conversation. I am not certain whether he cried. His whole appearance and conversation was different from that of a sane man. [Witness further testified, in substance, as upon the traverse. See post.]

LYMAN PAINE, called and sworn on behalf of prisoner, testified: I am a magistrate. On the Saturday previous to the murder, the prisoner came to my office, opened the door, advanced four or five feet, stood half a minute, and then said he wanted a warrant. I asked him what he wanted a warrant for. He advanced nearer to me, and I asked him again. He said for the man who put him in the State Prison. I asked then if he had been put in the prison for stealing a horse. He said he didn't steal it. I inquired if he had not been tried and convicted. He said nothing in reply. I then said, "Then you want a warrant for perjury; for swearing false." He said Yes. I told him in order to get a warrant, he must get at the facts. He then appeared to be in a passion; said he had been abused, and that he would have satisfaction. I told him I could not give a warrant. He stood still and hung down his head; and then looking up at me, said he must and would have one. He then put his hands in his pocket, took out two shillings, and demanded one. I told him he had better take his money; go away and attend to his businesss, or he might get to prison again. I advised him to get some place to work. He said he couldn't, he was so deaf. Said he had been abused at the prison, and was deaf. He left the office in a passion; slammed the door very hard, but came back in the afternoon. He had the same manner as before; was very deaf. I beckoned him to come near me. He then said he wanted a warrant for the man and woman that sent him to prison, and told me their names—one of which was Mrs. Godfrey. There was not any thing at the time that indicated that he was insane. He acted strange, but I attributed it to deafness and ignorance.

CHARLES A. PARSONS, called and sworn for prisoner, testified: About a week before the murder, the prisoner called at the office of Mr. Seward, and asked if it was a lawyer's office. On being told that it was, he said he wanted a warrant; a warrant for the man that sent him to prison. He said he wanted to get damage. I directed him to a justice's office; but he did not seem to understand me.

SALLY FREEMAN, the mother of the prisoner, was then called and sworn. She testified as follows: I live in Auburn. William, the prisoner, is twenty-three years of age, or will be in September next; was twenty-one when he came out of the prison. He was in prison five years. I did not see him whilst he was in prison; after he came out I saw him. I saw a change in him after he came out. He was a different boy from what he was when he went there. He was very lively before. I saw nothing different in him, only he seemed to be roiled. Before he went to prison he was always talking and laughing. When he came out of prison he didn't say any thing, and didn't appear as if he

knew any thing. I have never seen him laugh since he came out; he smiled once in a while. He has never complained of any body to me.

I have never said any thing to him about his being in prison. I have heard of his trying to get work. I have not seen him since the murder of the Van Nest family, until the opening of this court, when I went to the jail with Mr. Morgan, to see him. He knew me, or appeared to. I asked him if he was glad to see me. To this he made no answer. He was deaf; should say he is not in his right mind. Some of his relatives are deranged. His Aunt, Jane Brown, was; and Sidney Freeman, his uncle, is deranged, and has been twelve years. William smiled when I went into the jail, just as he does now. He did not ask me to come and see him again.

Cross Examination.—I am fifty years old, and have three children living. William's aunt was raving crazy; but she never hurt any one. She got well before she died. Sidney Freeman got crazy in the prison. He never hurt any one; neither of them ever stole any thing when crazy. Sidney was put in the prison for stealing. It is said he was put in wrongfully. William lived with Depuy after he was thirteen or fourteen years old. I worked out by the week, and he worked out. I saw but little of him. When he came out of the prison I was at work at Gen. Wood's; I have seen him five or six times, may be a dozen times, since he came out of prison.

James H. Bostwick, called and sworn as a witness for the prisoner, testified as follows: I am a justice of the peace, in Auburn. I have known Freeman by sight, since his infancy. He used to run about our streets like other black boys. He was rather a smart boy. Saw him since he came out of prison; the first time was in November last. At another time he came into my office, and asked for a warrant. I asked for whom. He said for the persons who had been the means of putting him into the State Prison; that he had been sent there wrongfully, and wanted pay for his time. He was deaf, and held his head down. [Witness further testified, in substance, as upon the traverse. See post.]

Mary Ann Newark, a witness on behalf of the prisoner, being sworn, testified: I have lived twenty-six years in Auburn. I have known Freeman since he was a little boy. As far as I can remember, he was a smart little boy. Saw him after he came out of the prison, in the winter. It was just before he came to my house. He was in the street, but did not say any thing. I saw no more of him until he came to board with me. I had him to help me carry clothes down into the village. He did not hear very quick. He would put down his ear and want me to speak louder.

I lived in New Guinea, just south of the village of Auburn. He said he would come to my house, do chores, carry my clothes, saw wood, and not pay money. He proposed it himself. I told him he might come, and he did. He never had any thing to say, only as I would ask him to do things. He always sat, and never would say any thing. He was never in the house

much. He was at his meals and slept there. He spoke only when I would ask him questions, and then he would answer quick-like, yes, or no. He never asked me any questions, only what to do. He understood me, and would do what he was told to do. He acted queer, but I thought it might be because he was deaf. He never was in the house much. He made no complaints. He left my house on Thursday evening, just as the bells were ringing for meeting. He said nothing. It was about six o'clock. I did not see him have any thing in his hands or carry any thing with him. I did not look after him. Had no idea where he was going. He was then perfectly sober. I did not see him again until the officers brought him down to the village.

DEBORAH DEPUY sworn, says: I live in the village of Auburn. I knew Freeman before he went to prison. I was well acquainted with him. He was a very smart, playful lad, and very quick to understand. His hearing was as good as any boy's. His disposition was good, as far as I knew. I knew him in company among young folks. Have seen him at balls, parties and rides. He acted as sensibly and smart as any body on such occasions. He acted very smart. His spirits were good. I never heard him read, and believe he could not read.

After he came out of prison I knew him, and talked with him a number of times. I saw a difference in him; that he did not act as he used to. He never talked unless spoken to. He couldn't hear. He was deaf. Sometimes he would answer me, and sometimes he wouldn't. I never knew him to speak of his own accord. He came to my house about every day, or every other day. I cannot tell any thing about his cheerfulness after he came out of prison. He was very dull. When spoken to, he would look up to you and say nothing. He appeared to be very dull. He didn't go in company after he came out of prison. He said they did not treat him well in prison. I used to talk with him about it. I used to ask him what made him appear so dull. He said he didn't know. He never said whether he stole the horse. I asked him how he lost his hearing. He said they HIT HIM ON HIS HEAD WITH A BOARD, AND IT APPEARED AS IF THE SOUND WENT DOWN HIS THROAT. (See physician's account of his ear, as found on post mortem examination.) I don't think he is in his right mind. He don't act as he used to. He used to talk a great deal before he went to prison, and now he don't seem sensible when you talk to him.

CROSS EXAMINATION.—I live below the female seminary, near Mr. Abbott's. My husband's brother married William's sister. I cannot tell how long I have been married. I don't recollect who married me, nor where. I have been at no balls or rides with Freeman since he came out of prison. I can't tell on what point he has less sense. I think he has not, because he don't act as he used to.

DR. LEVI HERMANCE, a witness in behalf of the prisoner, being sworn, testified: I saw Freeman the fore part of last winter. He sawed wood for me.

He was very deaf. I learned from him that he had been to prison, and he said "they wouldn't pay him." He didn't ask whether he could get pay or not. I had no particular impression then that he was out of his head. His conversation and manner attracted my attention. I thought it singular. Had a conversation with him about the wood. Saw him on the sidewalk a day or two after. He then spoke of their refusing to pay him. I think he said "they have sent me to prison, and I wasn't guilty, and they won't pay me." This is all the conversation I ever had with him until in the jail. The impression made by the two conversations was that he was deranged. [Witness further testified as upon the traverse. See post.]

ROBERT FREEMAN, sworn in behalf of prisoner, testified: I am not related to the prisoner. I became acquainted with him eight years ago this summer, at the American Hotel. I was table waiter. He cleaned the knives. He was rather slow, but was a smart boy. He appeared to understand well. He was fond of play, and I had a good many play spells with him. He did not appear like the same boy when he came out of prison.

JOHN DEPUY, called and sworn, testified as follows: I suspect I married a sister of the prisoner. I have known him thirteen years. There were a good many that were smarter than him. He could read some in the spelling book, but he had but little learning. He was always lively, active and playful. He played, wrestled and jumped. I recollect before he went to prison, that John Thompson was very smart, and that Freeman could throw him the best way he could fix it. I knew of his going to balls. He was social, lively and very talkative before he went to prison. He was at my house the night Mrs. Godfrey's horse was stolen. [Witness further testified in substance as upon the traverse. See post.]

ADAM GRAY, a witness called and sworn on behalf of the prisoner, testified: I have lived in Auburn eighteen years. I know Freeman. He was a smart boy; was very active, and had a good deal to say. He is considerably changed since he came out of prison. He does not appear as lively as before. He lived with me a part of last winter. He used to talk about going away. He said he didn't know people. They seemed strange to him. I have seen him laugh since he came out of prison. He lived with me about two months. Slept in a bed in the chamber. He used to get up nights and come down stairs. Said it was day-light; he was going to work. I heard him sing in the night and make noises. I couldn't understand what he sung. I have seen him dance in the night when he got up. There seems to be a difference in him since he left prison, as to knowledge.

CROSS EXAMINATION.—I never saw him drink any ardent spirits while he lived with me. I saw him once when I thought he had been drinking. He went out one night and was gone two hours. Don't know where he went. Said he was going to work when he left me. He was a boy when he went to prison, and a man grown when he came out. It was night when I heard him dance. Don't know whether he had been drinking. Some colored

people dance a good deal, and some do not. Before he went to prison he was very active. Since he came out I have talked with him about going to meeting. He laughed at it. Sometimes he would go, and sometimes not. He would try to read, but I could not make out what he was reading. [Witness further testified in substance as upon the traverse. See post.]

Ethan A. Warden, called and sworn as a witness on behalf of prisoner, testified: I have known Freeman fourteen years. He came to live with my father, and afterwards lived with me five or six months. We considered him a bright, active boy. He used to play a good deal. We thought he understood readily enough. He used to go to Sabbath school when he lived with me. He could then hear well. We kept him to go of errands, scour knives and forks, and take care of children. Saw him in the prison. He was very deaf. I did not say much to him, but thought something strange had come over him. The next time I saw him was after he came out of prison and a short time before the tragedy at the Lake. I asked him how he did. He made no answer. After the murder of the Van Nest family, I went up to the Lake and saw him in a wagon coming to Auburn. After he got to the jail I asked him if he knew me. He said Yes. They took him to a cell and put irons on him. He said he recollected being with me. I was at the jail again a few days after. Talked with him about the affair at Van Nest's. He is not as intelligent as he used to be. He does not appear to be a man of sound intellect. I thought he was but little above the brutes as regards right and wrong. He don't appear to have reason, or power to draw inferences. [Witness further testified in substance as upon the traverse. See post.]

Philo H. Perry, called and sworn on the part of the prisoner, testified: I have seen the prisoner and tried to converse with him. I heard Mr. Seward make the attempt. Mr. S. asked Freeman who the jury were, or what they were. He said he didn't know. Mr. S. asked him what the business of the jury was. Same answer. He said something about having been in prison five years, and about getting his pay for it. He said something which led me to suppose that he thought the jury a permanent body. I could not come to any satisfactory conclusion in my own mind how far he had any responsibility. My opinion, so far as I have any, is that it seemed to me as if he must have known he was not doing right, but that he had no conception of the enormity of the offence. Did not seem to have any idea that the result of the trial depended at all on the exertions of his counsel, or evidence. He has scarcely any intellect at all, as far as I can judge. He has a smile very much indicative of idiocy. [Witness further testified in substance as upon the traverse. See trial.]

Dr. Blanchard Fosgate sworn, and testified: I am a physician and surgeon. On Monday, the sixteenth day of March, I was called by the jailor to examine the prisoner's arm. I dressed it. It had been wounded with a knife. He seemed morose. Sat still and made no complaint. I went up

to him to examine it and took hold of it. He did not stir. He did not know, apparently, that I was there. I asked if his hand pained him; he made no reply. The wound was in the wrist, immediately in the joint. The tendons were cut off; also, the main artery running to the hand. [Witness further testified in substance as upon the traverse. See trial.]

Dr. Lansingh Briggs, called and sworn, testified: I am a physician. Have been physician to State Prison. I have known Freeman eight or ten years. Always supposed him to be a boy of common intelligence for boys of his age and condition. I saw him in the latter part of April. Dr. Fosgate and W. T. Worden were present. My object was not then to test the condition of his mind. I went upon Dr. Fosgate's invitation; he was the physician. Dr. Fosgate proceeded to dress his hand. I examined the wound on his wrist, and I found he manifested very little sensibility as to pain. Seemed to be insensible to any pain or suffering. Examined his ankle, on which was a heavy chain and iron clasp. Dr. Fosgate asked him if it hurt him. He said no; said it never had.

Q. What opinion did you form as to his intellect or accountability?

A. I formed no opinion as to his accountability. I came away with the impression on my mind, exceedingly strong, that the boy had become demented, from what I had known of him previously and had seen that day. [Witness further testified in substance as upon the traverse. See trial.]

Dr. Charles Van Epps, being called and sworn, testified: I reside in Auburn. Have practiced medicine twenty-one years; I was acquainted with prisoner since he was a nursing babe. He was as active and sprightly as boys in general. I practiced in his mother's family, but lost recollection of him from the time he was two or three years old till I saw him in prison. My opinion of the condition of his mind is, that it was dementia, or idiotic derangement. In examining him, I found that all the answers to questions we could get were yes or no. The state of his health appeared to be perfectly good. Tried to have him read; he read like a babe. Would say over something like a part of a prayer, that he might have been learnt in Sabbath school. We tried to have him count. He did once count up as far as twenty-eight, but that seemed an accident more than any thing else. The impression on my mind was more strong, because he had an uncle here in town that was deranged.

Cross Examined.—I saw him in jail a few days after this court commenced. I saw him two consecutive days, the middle of the first week of this court. The first time I visited him alone, the next with Dr. Pitney, the next with Captain William P. Smith. The conversations occurred at both times. First, I asked him if he knew me. Think he smiled a little, and grunted, and made no other answer. Asked him if he felt well. Answer, Yes. Whether they used him well. Answer, Yes. Whether he was crazy. Answer, No.

Q. On that conversation did you form the opinion that he was demented?

A. I formed the opinion then, that his intellect was very small indeed; I mean his intellectual faculties. Had not sufficient information then to make up my mind whether he was demented or not. I went again; I think it was the next day. Found his pulse to vary both when sitting and when standing, without any variations in his countenance. I asked him if any other person had ever advised him to commit the crime. He said No. If any person had hired him to commit the murder. Answer, No. If he had ever told any body he was going to do it? Answer, No. What he was put into the jail for? Answer, Don't know. Afterwards, seemed to recollect himself, and said "horse." Asked him if he thought he would be found out when he committed this act. Answer, Yes. I asked him if he could read. He answered Yes. I then opened the book and gave it to him; he then mumbled over some words without meaning. Seemed to be prayer words; "Jesus Christ," "pray," only two words I recollect distinctly hearing him speak.

Q. Which of all the remarks induced you to make up your mind as to the state of his mind?

A. I made up my mind from his appearance generally, and from all his remarks.

Q. Can you tell me any one thing that he has said that was not entirely rational?

A. I find men in this condition always in the habit of telling the truth, as nearly as they can recollect; this is one powerful argument in favor of his insanity. When they have committed desperate acts they glory in them.

Q. What are the symptoms of the disease which you think this man has got?

A. No one patient would probably have all the symptoms of the disease. In dementia, the patient is inclined to be stupid a considerable portion of the time; but considerably sane and correct on some subjects. If interested, so as to arouse their intellect, they will answer correctly; if not interested sufficiently to arouse or interest them, they will seem simple. If caused by brutal treatment, calculated to lead to desperate mania, they will commit acts of violence; if caused by cruel treatment, it would excite revenge, and they would be likely to commit acts of violence, or murder; if from disappointment, as of love, &c., if you touch upon those points, it seems to destroy their reasoning faculties. These individuals, like most other insane persons, unless grown entirely idiotic, are easily excited, and become violent in their passions. I don't recollect as I ever saw a demented patient angry. Dementia is that form of insanity running into idiocy.

Q. What do you think the cause is in this case?

A. I should think it originated from brutal treatment. [Witness further testified in substance as upon the traverse. See trial.]

Rev. John M. Austin, sworn and testified: I reside in Auburn. Am clergyman of the Universalist church; shall have been here two years in

October next. I first knew the prisoner after his confinement in jail. Saw him a week or ten days after he was confined in jail, in the latter part of March. Have had several interviews with him in jail; sometimes alone, sometimes with others. Don't know that I could give a correct narration of all my conversation, not having expected to be called upon.

I put to him a variety of questions about the murder, but many of his answers were such that I could not understand them. I inquired repeatedly why he killed that family. As soon as that inquiry was put, he would begin to speak about being in State Prison; and in a very broken and disjointed manner undertook to relate something about being put in prison wrongfully. His language I could not give at all. I inquired if he thought it right to kill those persons who had no hand in getting him in prison. Only answer I got was something about his being put in prison, &c. He told me he went to see the woman from whom the horse was stolen, and requested pay for his time in prison. I can't give his language, for that was in a very broken and disjointed manner. Asked him if he thought it was right to kill that innocent child, who could not have injured him. Got no audible reply, but he hung his head, and shook it. I got the idea that he couldn't give any intelligent answer. Asked how he happened to go that particular night. Reply, "I don't know; the time had come." Inquired why he entered that particular house; why not some other. Answer, "I went along out, and thought I might begin there." Inquired what question Mr. Van Nest put to him, when he first went into the room? Replied, "He asked me what I wanted. I told him I came in to warm my hands." Inquired if Mr. Van Nest said any thing more. Reply was, "He said, if you eat my liver I'll eat your's." Inquired how he became deaf. In a very incoherent reply, I gathered something like this, "that stones dropped into my ears." Inquired if he thought he could commit such an act without being punished. He replied, "I didn't think any thing about it." Something was said about work that he had to do; it was in relation to this killing that he used the term—that he had work to do. He spoke in such a manner that I couldn't draw any thing definite from it.

Q. What is your opinion of his mind?

A. I consider him in a very strange state. He could not give a reason for his conduct in this affair. And also I drew that inference from his remark about eating his liver, &c. Judging from what I learned of him, should not consider him of sound mind.

Q. What is your opinion of his intellect?

A. I consider it very feeble indeed. I should think a child of five or six years of age had as much mind, both intellectually and morally. He has a sense of some things at times, and at others, not.

Cross Examination.—I have felt it my duty to visit the prisoner.

Q. Have you not been active in aiding counsel to prepare a defence?

A. I have taken about the same interest, probably, that many others have.

Q. Have you not been in frequent consultation with his counsel as to the manner of getting up a defence?

A. I think at first I asked Mr. Seward if the prisoner would be defended, and I think he replied, that he would.

Q. Have you not suggested to Freeman the propriety of his making a defence?

A. I think I inquired of Freeman if he had any lawyer engaged, and he answered, No. I then inquired of him if he would like to have Governor Seward defend him, but he did not seem to understand what I meant. After repeating it several times, and using several different phrases, he seemed to comprehend, and answered, Yes. I subsequently stated to Governor S. what he said.

Q. Have you not been about town looking up witnesses?

A. I have inquired what persons knew about Freeman. Have conversed with several persons, but have never been about particularly for that purpose.

Q. Have you preached on the subject?

A. I don't know that I have.

Q. Have you not preached on the subject, generally?

A. Never particularly; never made it a theme of a discourse.

Q. Have you not preached on moral insanity within six months?

A. I have not, except to advert to it incidentally, perhaps, in a discourse.

Q. Have you not preached on the subject of capital punishment, lately?

A. Not to make that a subject; but I may have alluded to it; probably I may have done so.

Q. Have you written, in relation to the murder, for the press?

A. I have. I wrote an article for a religious paper in Utica, some six or eight weeks since. Some copies of that paper are taken here.

Q. Was it the drift of that article to show that this man ought not to be punished?

A. No, sir.

Q. Was it the drift of it to show that others are more to blame than he; that he is irresponsible?

A. I don't know that I said in those articles that he was irresponsible. I have written in regard to the improprieties of others, in this matter, but did not suggest that he was not a fit object for punishment.

Q. Have you written for other papers?

A. I have, sir. I have written for the Auburn Daily Advertiser.

Q. At any considerable length?

A. That depends upon our notions of length; perhaps a column or two.

Q. Was it the object of that article to show that the prisoner was not to blame?

A. I don't know that I have ever observed that he was not to blame.

Q. Was it the object to show that his education had been neglected?

A. Very likely I may have said so. I think there is no doubt on that point.

Q. Was it asserted, that those who neglected his education were as much to blame as himself?

A. I am not aware of having made such an assertion.

Q. Was it asserted that they were in some degree accountable for his crime?

A. I may have inquired if community were not accountable for the crimes of those brought up in their midst.

Q. Was there a suggestion that the crime was the legitimate effect of the indifference of the community to the colored population?

A. I think there was, for I do think so, in some measure.

Q. Then you think the community responsible for the crime of Freeman?

A. My opinion is, that one of the legitimate causes that led to this tragical event, is the utter neglect shown to the moral, intellectual and religious instruction of the colored people. [Witness continued in substance as upon the traverse. See post.]

HORACE HOTCHKISS, called and sworn, testified as follows: I know the prisoner. I first knew him in the State Prison something over a year ago. I had a class in the Sabbath school in the prison, and he was in my class. I did not have much success in attempting to teach him; so far as I remember, he knew some letters; but his knowledge was very slight. There seemed to be a want of intelligence and comprehension. I tried to learn him to read. He did not appear to show any indications of learning any thing. He was very dull and stupid. Have seen him since, but have seen no advance in capacity. It was my conviction that he possessed a low intellect. [Witness further testified in substance as upon the traverse.]

AMARIAH BRIGHAM, called and sworn, testified as follows: I am the Superintendent of the State Lunatic Asylum at Utica. I have had a large number of insane persons under my observation and charge at different times. I saw the accused several weeks ago. I think I saw him the first week of the trial of Henry Wyatt, at this place. I have seen him six or seven times since; once alone, when I spent considerable time with him. I then went through an examination similar to that which other witnesses have testified they went through with, in order to ascertain the extent of his capacity and the condition of his mental powers. I observed his motions, actions and peculiarities whilst trying to ascertain whether he could read or render any account of the transaction for which he is indicted. I tried him in various ways, and by all the means at command, for the purpose of ascertaining the condition of his mental faculties, in respect to sanity.

There are circumstances attending this case that render it somewhat remarkable. He has some mind—some intelligence; and yet the former is very weak, and the latter very trifling in amount. I asked him about the court, the counsel, the jury, and the trial, to ascertain if he knew what he

was to be tried for; but I never could get from him a distinct answer. His answer was sometimes, that he did't know, and sometimes he would say, "a horse." I tried to converse with him about his defence. I asked him what he could prove in defence of himself. He said they could prove he was in prison five years for stealing a horse, and he didn't steal it. This he twice repeated, in reply to my questions. I asked, if he was sorry for the act. He sometimes said "No," and sometimes "I don't know," in reply. His words were spoken slowly and somewhat incoherently. I asked him if he were not sorry that he killed that innocent little child, that could not hurt him. Once he said, "I don't know," and once, "you may say that;" but it was slowly said. He laughed when I asked about the child. I asked him what he was laughing at; if he was not ashamed to laugh. He replied, "I don't know." His laugh was not convulsive, but was more than a smile.

Others, in my presence, asked him about pay, and showed him money. I once did the same, and exhibited to him bank bills, silver and gold coin. He seemed to be animated, in some degree, by the sight of money, and smiled with a smile more intelligent than ordinarily. I asked him if the bills exhibited would pay him. When shown a dollar or so, he said No; but when I offered him the whole, he smiled. I asked him if a dollar a day, which would amount to about one thousand dollars, would satisfy him. He said it would; and that was his nearest approach to an answer as to what would satisfy him.

I talked with him about the deed charged against him, to ascertain the state of his feelings. I desired to see if he did not think he was doing wrong. He said he did not; that he wanted his pay. I tried in various ways to ascertain if he knew whether the killing of the persons was wrong. He uniformly answered, No; but never seemed able to comprehend me. He said he was deaf in both ears. He said his right ear was hurt when he was young, and that made him deaf in that; the other had been STRUCK WITH A BOARD BY A MAN IN THE PRISON, and a stone was knocked into or out of his ear, which made that ear deaf. Could not understand him exactly, but gathered from him the substance of what I have just stated. He don't hear even if you speak loud, unless his attention is called to it.

My experience among the insane has been very considerable. I suppose few men living have seen so many. I was an officer of the Retreat for the Insane, at Hartford, ten years; was principal three years. I have had charge of the Asylum at Utica since it was opened. I have visited the largest hospitals in this country and in Europe, although I do not consider such information experience, except in some peculiar cases like that of Hatfield. I asked him questions for the purpose of seeing what sensibility or feeling he had. I asked if he would be afraid to be hung, or would dislike to be hung. He smiled, and said "I don't know." I ascertained to my satisfaction that he had no feeling nor concern about it. I asked him if he had ever been crazy. He said he went crazy in the prison. I asked him why he became so. He said they struck him on the head, and said he was very crazy. I

asked him if he didn't want to see his mother, his friends and acquaintances here. To all these he answered, No.

CROSS EXAMINATION.—He appeared to have memory of some things. Memory is sometimes destroyed by insanity, but rarely. Most of the insane remember most things, as well as ever, concerning their past lives. Unless their minds are entirely destroyed, they have some memory of transactions and of their friends. Some insane persons narrate past transactions, and repeat them frequently. I should think that a majority of those now in the Asylum at Utica have tolerably good memories.

Q. How is this man as to memory?

A. In many respects I cannot tell, not knowing what was the truth of the matters stated by him. I know he recollected you, (Mr. V. B.) He knew me.

Q. Was that a circumstance denoting insanity?

A. I did not consider that a circumstance bearing either way. I should think nine-tenths of the inmates of the Asylum would recollect as much.

Q. Are you confident that he recognized you?

A. I feel confident that he recollects my having visited him.

Q. How was his attention?

A. I should say very dull, indeed.

Q. What do you mean by attention?

A. His observance of the circumstances around him.

Q. Was there any other want of attention than would naturally follow from deafness?

A. I think there was much more. If I make comparisons it must be with other deaf people.

Q. Are deaf persons attentive?

A. When alone with an individual they are.

Q. Did he not attend to what you were saying?

A. He never spoke to me, or asked me any question. He never attended to me at all, or to any other person, unless directly questioned.

Q. Did you not accompany me, on one occasion, to see him?

A. I recollect you (Mr. V. B.) and I went just before dinner, and were in a great hurry.

Q. Did he wander then from the subject presented?

A. He did not wander from the subject inquired about to another, but my impression was, that his attention is momentary and did not pursue the subject. When his attention was called to subjects in which he is much interested, he never paid any further attention to them than to answer, yes or no.

Q. Suppose you should talk to him half an hour about killing those people in Fleming, would he not attend all the while to you?

A. When we asked him to go on and tell all about the transactions, he would only answer the questions put.

Q. What is he about, if not attentive?

A. He is attentive to one question long enough to give an answer, and then his attention appears to be gone.

Q. What induces the smile that you mention?

A. Probably his attention falls off to dreamy imaginings, or something of the kind, and he then smiles. He attends only to questions asked, and then seems to wander.

Q. Did you ask him about his treatment in the State Prison?

A. I think I did not.

Q. Did you afford him an opportunity to relate what he knew?

A. I tried to have him connect his thoughts, by constant promptings, and to get from him a description of matters, but I always failed. His answers were, yes, or no.

Q. Did that indicate insanity?

A. There are instances in which sane men talk very freely about such a deed and its enormities.

Q. Would a sane man be inclined to relate the facts of the commission of such a crime?

A. If they undertake, they generally give one. I should think a sane man would either refuse, altogether, or go on and state them correctly.

Q. Has the prisoner refused at all?

A. I think he has never shown any unwillingness to answer questions, in his way.

Q. What was the result of your examination, as to his power of comparison?

A. I would make the same remark as I have in regard to his attention. It is an important faculty, and yet I think it nearly gone.

Q. You say that is an important faculty?

A. It is, in order to enable a person to judge.

Q. Did he not compare the killing of the child with the killing of a man, when he spoke of it.

A. He seemed to answer very indifferently. I do not say that he is entirely destitute of the power of comparison. I see only feeble evidence of it. In reference to the child, I think he manifested some.

Q. Well, Doctor, have you become satisfied about his sanity?

A. I have not made up my mind decidedly concerning it. My effort has been to keep my mind free from bias until I hear all the proof.

Q. Have you not formed an opinion?

A. I have not formed such an opinion as I should choose to state at this stage of the proceedings.

Q. If this man is insane, what is the species of his insanity?

A. That would involve the same thing as giving an opinion.

Q. Then you have not formed an opinion?

A. I do not say that I have not formed one, but I desire to keep my mind open until I hear all the case, before expressing it. I think it is due to the station I hold to withhold my opinion until I hear the whole testimony. I

see that publicity is given to every thing which takes place here, and I wish to do no act that will impair my usefulness.

Q. From the examination you have given this case, if he is insane can you not state the form of his insanity?

A. I must answer as before. There may be circumstances developed that will change my present impression in regard to him. I must therefore hold my opinion in reserve until I hear all the testimony in the case.

Counsel for the prisoner here rested the examination.

Mr. Sherwood, the district attorney, then opened the case to the jury on behalf of the people. He dwelt at great length upon the enormity of the crime for which the prisoner was indicted; the certainty of his guilt, and the law as the same existed in Great Britain and America, in relation to insanity. Whilst it was the right of the prisoner's counsel to interpose a plea of present insanity for the prisoner at the bar, and their right to give the opinions of medical men in evidence, he felt called upon to caution the jury against the extravagant notions upon the subject which many entertained. Whilst he would concede to medical men the benefits of their learning, he could not regard their opinions as controlling, in a case where men of common observation could as well determine a fact. He did not regard insanity as a subject that was purely or exclusively medical. All persons having a good perception, a sound judgment, and a discerning eye, could in a majority of cases as well determine whether another is insane, as the most expert and experienced physician. In this case, the prisoner has displayed an ingenuity and skill in the manufacture of his weapons for the assault—in selecting the hour and the place for the depredation—in the assassination of the family of Van Nest, and in his flight from the scene made bloody by his hand, that evinced mental power, as well as depravity. Every thing connected with the tragedy indicates the possession of mind then; and his recollection of the affair, of his imprisonment in the State Prison, his fear of being punished, and his avaricious desire for pay for his imprisonment, indicates its possession now. His health, in all respects, except the wound in his hand; his shrewdness in selecting persons with whom he most freely converses; his bright and intelligent eye, faculties of which all can judge, repel the idea of insanity. His (Mr. S.'s) own examination had satisfied him that the plea of insanity in this case was groundless, and had hoped to have avoided the necessity of a protracted examination of witnesses upon a matter that appeared to him so plain to the minds of all. The court, however, had seen proper to submit the question to a jury, and it became his duty, therefore, to make such proof as in his judgment would satisfy them of the prisoner's sanity, and that he ought to be tried. That the prisoner's mind was rude and uncultivated—that he was a dull, grovelling, morose negro, he was prepared to admit; but that he was not a responsible being—that he did not know that the massacre of the Van Nest family was wrong, and that he does not feel guilty now, he (Mr. S.) neither believed himself, nor did the people

at large for whom he acted. The defence of insanity was brought into disrepute when interposed in such a case. It was dangerous to the public, when based only upon the singularity of the prisoner's movements, or the enormity of the crime which he had committed. That he cannot read, but thinks he can, induces one to think him insane. That he cannot define the Supreme Being, leads another to think so; and because another finds him taciturn and unwilling to talk, he comes to the same conclusion. A learned physician does not find his faculties sufficiently active, his attention sufficiently profound, or his comparison sufficiently good to enable him to venture an opinion that he is sane. Admitting all this, does it not fall far short of proving insanity or of relieving the prisoner from the consequences of his crime? Shall such pretences suffice for a defence that shall screen a murderer, and such a murderer, from justice? If so, the responsibility shall rest upon you who are empanelled to decide this momentous question. We shall give you the history of this man, up to the time when he was brought into court to be arraigned; we will call medical men, lawyers and laymen, as to the state of his mind, to the end that you may have all the facts appertaining to his present mental condition. If we show him competent to distinguish between right and wrong, we shall insist that he is legally sane and answerable to the law for the horrid crime of murder.

NATHANIEL LYNCH, sworn for the people, testified as follows: I reside in Sennett. Know the prisoner, and knew him sixteen or seventeen years ago. He lived with me a few weeks when he was six or seven years old. I then lived in the east end of the village of Auburn. His mother wanted me to take him and bring him up. He was then very playful, and ran away every chance he could get. Play appeared to be all he cared for. I found his mother was a drinking woman. He would run away and go home, so I concluded not to keep him. Sally Freeman, his mother, is reputed to be part squaw. After William left me I saw him but a few times, until last December on the side-walks. I was looking for some one to help drive some cattle, out three or four miles, into town. He had a saw-buck on his arm. In going out, in a sleigh, he told me he had once lived with me. I asked him where he lived; had forgotten him. Just before getting there I bought a couple of head of cattle, and as there was some dispute about them I took him to see me pay the money. We got the cattle together and drove them into the village. He came back in the morning, and worked for me four or five days. I paid him three shillings for helping drive the cattle. He said that would satisfy him. The next day he came up I was absent. When I returned I found him sawing wood. He asked me if I did not want to hire him. I told him I did. Next morning he came very early, before daylight. I heard him when he came. After he had worked three days and had sawed nearly all my wood, I asked him how much wages he wanted. He said five shillings a day. I told him I could give only four; that was all that I paid in the winter. He appeared quite offended. He took twelve shillings,

counted it over, and said it was right. I think he worked one day after that, for which I paid him half a dollar. After he left work, he came up one day and asked if my cattle had not got away. He said he saw some cattle in Clarksville, which he thought were mine. That was two or three weeks before he committed the murder. I next saw him the first week in June, in his cell. I went into the cell and asked him if he knew me. He said, Yes. I asked him when he lived with me. He said when he was quite a small boy.

I then asked him about the murder, and who he killed first. He said the man. I asked him who he killed next. He said he saw a woman coming in, and he stabbed her. I asked him who he stabbed next. He said he saw a person lying on the bed as he came in, and stabbed it. I asked him who he stabbed next. He said he went up to the head of the stairs, and met a man, and stabbed him. I asked him where. He pointed to his own breast and said, "Somewhere about here." I asked him what he did then. He said the man threw a candlestick and hit him; then his feet slipped a little; the man got the candlestick, hit him again, and he went clear down to the bottom of the stairs. I asked what he did then. He said he thought he would stab him again, but did not know but it was enough. He said the man got a broom-stick, and that he went into the hall and then he broke his knife. A woman followed him and he stabbed her. He gave a different relation at other times. He said he stabbed the old lady with the knife in a club. I asked him how he could kill the little child. He said he thought he would kill all there was in the house. I have not, in what I have seen, discovered that he is insane. My opinion is, that he is sane, but of weak intellect. [Witness further testified as upon the traverse. See post.]

THOMAS R. TOWNSEND, called and sworn, testified: I was chaplain of the Prison three and a half years; from '40 to '43. During that time I knew the prisoner. My impression is that he was in Sabbath School. Think his teacher told me his prospect of learning was very small. I had conversations with him. He was usually taciturn; talked a little; answered questions readily, and threw the burthen of conversation mainly upon me. Saw him in jail first week of trial of Wyatt; had a short conversation with him there, by questions and answers. I asked him but few questions. I discovered a difference, from my previous acquaintance with him. His increased deafness, brevity of his answers, not the same freedom of remark as formerly, and some questions he answered in reference to the outrage; he answered that he had been unjustly imprisoned.

CROSS EXAMINATION.—My visits were made to the cells in prison. I went in and asked him if he knew me. He said he did. Can't say, but think I inquired whether they had injured him. He said No. Said he wanted his pay. I found him more deaf and taciturn than before. Don't think he asked me any questions. [Witness further testified, in substance, as upon the traverse. See post.]

AARON DEMUN, called and sworn, testified: I reside in Auburn; have resided here twenty-three or four years. I know the prisoner. I am an uncle to him, by marriage. He used to make his home with me, before he went to prison, off and on for a year or so. He was rather a wild boy; would not stay long in a place.

CROSS EXAMINATION.—I am forty-five, 6th day of December. Prisoner must be a very little over twenty-two years old. He was an active, lively, wild boy; loved play. He was quick to understand as other boys. When he went to prison he was only about sixteen or seventeen years of age. When he came out of State Prison he was very hard of hearing, and did not want to talk. [Witness further testified, in substance, as upon the traverse. See post.]

ISRAEL G. WOOD, called and sworn, testified: I live in Auburn. Recollect the time when Freeman was convicted for larceny, and sent to State Prison. I kept the jail. I have known him from a child. He was not very smart; about as he is now, with the exception of his being deaf. Before he was convicted, he was in jail four or five months. He never was a great talker, or I never heard him talk a great deal; would answer questions. He broke a lock, and let himself and another prisoner out. The other one was caught. Freeman got away; was gone two or three days. I found him at Lyons, in jail, and brought him back. Coming home, I asked him how he got away. He told me he kept to the woods; came to Cayuga lake; said he got a boat. Asked him how he come to cut up such a caper. He feigned himself sick that morning, so that he didn't go out. Cried, and said he was sick. I supposed he was. He afterwards said he was not sick. I said I didn't know but he would have to go to State Prison. He said he didn't know but the d—d nigger, John Furman, would swear him into prison. Said John or Jack was the guilty one. I have known him since he came out of prison. I have been a good many times out and in jail. About a week ago Bostwick was in the jail when I went there. I asked him how long he was in prison. He said five years. Asked him how long he was in jail. Said four months. I said I discovered no difference from what he was before in jail, except his deafness. I never thought him insane, till this affair; that was one object in my going to see him. I could see no difference, only that he was hard of hearing.

CROSS EXAMINED.—I did all I could, and said all I could, to prevent his being Lynched; I might have said he ought to have been Lynched, in connection with some other conversation. I recollect seeing him before he was five years old; saw him before he could walk, in neighborhood of Watson's brewery. I can't tell only as I see him around, whether he had any more or less intellect, till he came to jail. Talked with him more than at any other time. Can't tell any conversation with him in jail, only to tell him to go work. Since I knew him, before he went to prison, and while he was in jail, he always held his head down; never knew him to hold his head up

and look a man in the face. I don't know as I ever knew him to ask questions; might have asked about his work. I humored him. He was a good fellow to work. [Witnes further testified in substance as upon the traverse. See trial.]

THOMAS F. MUNROE, called and sworn for the people, testified as follows; I have resided in Auburn twenty-four years. I knew him when a boy; was with the constables when he was arrested for stealing the horse. Freeman denied stealing the horse himself. He was then fifteen or sixteen years old. He then had a down-cast look. He was deaf then, but not so deaf as now. I recollect that he was an ugly boy and threw stones at white boys.

I am the police officer of the village of Auburn. The next morning after the murder I was requested to go to John Depuy's. I asked Depuy where Bill was. He said he had not been seen since he threatened to kill him. He then asked me what caper Bill had been cutting up. I told him I wanted him for a witness. I told him so that I might not alarm him, and that, if possible, I might arrest the prisoner. I never heard that he was crazy till since the murder. My opinion is I never saw any insanity in him. I think if he is insane most of the negroes in Auburn are.

CROSS EXAMINATION.—I don't know as I ever said Freeman ought to be Lynched. I have said that if they had hung him, it would have saved the county a great deal of expense. I might have said that it would have been better if he had been hung or killed. That was since the manufacture of craziness in this county.

Q. Have you not said that he ought to have been Lynched?

A. If I did it was in reference to the course taken by a certain set of men in relation to it.

Q. Have you not said that counsel ought to be tarred and feathered for defending him?

A. I might have said they deserved it for the course they have taken in his defence.

Q. Have you not made that or a similar declaration, and that, too, frequently?

A. I probably have said considerable about it, and somebody may have reported me.

Q. I desire an answer to my question if you can favor me?

A. I can't recollect what I have said. I am opposed to the course pursued, because I supposed all the testimony about his derangement was manufactured. [Witness further testified in substance, as upon the traverse. See post.]

ARETUS A. SABIN, called and sworn for the people, testified as follows: I knew the prisoner fifteen years ago. He then lived with Captain Warden. He was a wild boy and would run away. I next knew him in the prison. I was an officer there, in the cooper's shop. I saw Freeman filing in the hame shop. Never heard or said that he was crazy then. I don't know

that he was deaf in the prison. [Witness continued as upon the traverse. See post.]

ABRAHAM A. VANDERHEYDEN, sworn for the people, says: I have been acquainted with the prisoner since he was a boy. I arrested him for stealing Mrs. Godfrey's horse. He always insisted that he did not steal the horse. Two or three weeks afterwards the horse was found, and one Jack Furman was arrested. Jack said Bill stole the horse. I saw him in State Prison several times, and have seen him since he came out. I think he appears different from what he did before he went in. It is harder to converse with him; his head hangs down and you have to talk loud. I did not know that he was deaf before. He answers questions put by me. He evaded questions in relation to the murder.

I met him at Baldwinsville, and assisted in bringing him to Auburn under arrest for the murder of the Van Nest family. I asked him how he got his hand cut; asked twice before he answered. He said by stabbing. I, with others, asked him how in the world he came to commit such a deed. He said he did'nt want to say any thing about it.

When the room was cleared so that but one person besides myself was with him, I said that he might as well tell me about the matter. I asked him how he came to commit the murder. He said, "you know there is no law for me." I asked what he meant by that. He said, "they ought to pay me." I asked him how he come to kill the child. He said he didn't know it was a child. I then asked him how he left. He said he took a horse. I then asked him where he rode the horse. He said he rode to New Guinea. I asked what he did with him. He said the horse fell and he left him there. He would answer questions, but would never lead on. He made no confession, except as stated. My opinion is that he is not crazy. [Witness continued in substance as upon the traverse. See post.]

STEPHEN S. AUSTIN, sworn for the people, testified: I know Freeman. He was a mischievous, cunning kind of a darkey, rather still and down-cast. When he was in jail, before he went to State Prison, I did not know that he was deaf. He didn't speak unless spoken to. He would turn up his eye instead of his head. I have seen him in the streets since he came out of prison. I can't see any difference except in color. I think he is of a lighter color than before he went to prison. He has grown. I have seen him several times, and it never occurred to me that he was crazy.

CROSS EXAMINATION.—I heard him answer questions in jail, when W. T. Worden, Esq., was there. He answered questions put to him; he did not ask any; he generally answered yes or no. There was this difference; before he went to prison, he asked questions; in jail, he did not. I don't think Bill is a fool. I think he knows as much as either of my dogs. I don't recollect that I ever said he was a fool. I said he was not worth the powder and shot to shoot him. I said, at the time, things that I didn't believe, to keep the mob from killing him.

WILLIAM HOLMES, sworn for the people, testified: I am a contractor in the State Prison, in the hame shop. Freeman was in our shop; he worked at filing iron. He was an ordinary workman: fine jobs were put in the hands of other men; he was in the shop nearly two years; he generally spoke monosyllables. They learn by comparison, and work by sample laid before them. He had difficulty with James E. Tyler, the keeper. I took occasion to reprimand him. Freeman said that the keeper was going to whip him, and he had done nothing worthy of confinement. He frequently alluded to the fact that he had not committed the crime; that he did not want to work; that he was deriving no benefit from his labor. I have never spoken to him since he left the prison. He always had a down-cast countenance, and turned up his eyes when he spoke.

CROSS EXAMINATION.—I had the entire direction of the hame shop. The wages averaged about twenty-five cents a day. There is a great difference in men. I inquired why he should conduct so as to occasion himself trouble. He replied, that Tyler was going to whip him; that he didn't feel disposed to suffer punishment when he didn't deserve it. I would not swear whether I have heard him use the words "feel disposed." He said he didn't want to stay there and work for nothing. He said he was accused of stealing a horse; but he didn't commit the crime. When he was first brought into the prison, I said it was a pity so young a boy should be brought to prison for horse-stealing. He said he didn't commit the act; they swore false against him.

I was at Van Nest's on the day of the prisoner's arrest. I made a proposition there to leave him to the hands of justice.

Q. Was it not proposed by you to Lynch him?

A. Not by me. I proposed to leave him to the law; but there was a proposition to make a different disposition of him.

Q. Was there not great excitement there?

A. There was.

Q. Did you not participate in the excitement?

A. Why, I was there, and there was great excitement and indignation at the result of the Wyatt trial.

Q. Did the assemblage pass a resolution to hang the prisoner on the spot?

A. My son said they had passed a vote to hang him, and the friend who was with me said I had better go and try to stop it.

Q. Did you lend your aid to stop it?

A. I stepped up to a gentleman standing on the steps, who I supposed might have influence, and urged him to put a stop to it. He said if I didn't come there to assist, that I had no business on the ground. He treated me with considerable indignation.

Q. Was the person whom you addressed engaged in the effort to hang the prisoner?

A. He said he came for that purpose, and meant to see justice done before he went home.

Q. Did you do any thing further toward quieting the excitement?

A. I told him if any mischief was done to the negro he would place himself in the same predicament of the negro—amenable to the law; "but," he replied, "we have no law; we have tried it once; justice is denied us; we will take the law into our own hands." I told him I had learned just before I left Auburn, that the judge had determined to call a special court to try Wyatt and this negro.

Q. Was there an effort made at Van Nest's house to kill the prisoner?

A. When Esquire Bostwick came to the door to take the prisoner out, I asked him to state the fact, to appease the multitude, that a special court would he held. The magistrate stated to the crowd that there was reason to believe that others were implicated, and perhaps white people. As the prisoner was led out, there was a cry of "kill the negro;" "take him away;" and a rush was made upon the officers who had him in charge.

Q. Did not this indicate a determination to execute the prisoner, had the crowd been able to have rescued him from the officers?

A. There were a good many respectable persons there, whom I thought were anxious to have him executed on the spot.

Re-Examination.—Q. Did the crowd assign any reasons for doing so, other than those stated?

A. The result of the Wyatt trial was the reason uniformly assigned. It was said that justice had been denied, and the community would not consent to have their wives and children butchered.

Q. Do you know that the defence in Wyatt's case was insanity?

A. I do; and the result was, that the jury could not agree. No verdict was brought in.

Q. Has he since been tried?

A. He has, and has been convicted for murder.

James E. Tyler, sworn for the people, testified: I was a keeper in the hame shop, in the State Prison, and knew Freeman there. He came under my charge in November, 1841. I soon discovered that he didn't do quite as much work as he ought to. I told him he was capable of doing as much work as other men of his size and experience, and he must do a reasonable day's work, and if he did not I should punish him. I talked to him at different times, about two months after he came in. Finding that talking did not have the desired effect, I called him up to flog him. Sometimes he said he did all he could, and sometimes he said he was sent there wrongfully. He may have made other excuses.

I called him up and told him I had done talking to him; I was going to punish him. I told him to take his clothes off. I turned to get the cat, and received a blow on the back part of the head from him. It started me a

little. As I looked around, Bill struck me on the back. I kicked at him, and knocked him partly over; perhaps he fell clear down. He jumped up, went across the shop, took up a knife and came at me. I took up a piece of board lying on the desk, went down and met him. It was a basswood board, two feet long, fourteen inches wide, and half an inch thick. It was a board one of the convicts had laid on my desk, on which was a count of lumber, planed on both sides. When I came in reach of him, I struck him on the head, flatwise; split the board, and left a piece in my hand four inches wide. (See ante, page 20.) He was then approaching me with a knife. I struck him on the wrist and knocked the knife out of his hand. I struck him five or six times across the buttocks with the board. I punished him and sent him to his work. I had no further difficulty with him. I struck no other blow on the head. I think the blow could not have hurt him. My impression is that the blow was upon his forehead, but may have been partly on the left side. He worked well after that. He held his head down and was rather down-cast. I never noticed any thing remarkable about his eye. He looked then as he does now. He made but few answers, but answered pertinently and short. I saw him two months ago in jail, and asked him if he knew me. He said he couldn't hear me. He was hard of hearing, but I saw no difference after he was struck. I think he could not have been hurt by the blow. I think it struck him on the fore part of his head. I never saw any thing to induce me to think he was insane.

Cross Examination.—Convicts do not talk much in the prison. They are required to speak only when spoken to, unless it is necessary to their work. It was the general conduct of Freeman that induced me to think he was not insane. I didn't consider him as intelligent a man as the generality of men in the prison. He was not as quick as most men. I noticed no stupidity about him.

Benjamin Van Keuren, sworn for the people, testified: I was foreman in the hame shop while Freeman was there. He filed iron for plating. He was a middling kind of a workman, not the best, nor the poorest. He went into the yard from our shop. The filing requires some judgment, and some practice. I had no conversation with him, only to give him work and to take it away. I noticed his manner and appearance. I cannot see much difference in his manner. He was partially deaf. I recollect when James E. Tyler, the keeper, punished him. He was not more deaf after that, only as deafness grows on a person. I think it grew some on him. I saw Tyler when he split the board on Freeman's head. I shouldn't think such a blow injured him. The board was only about two feet long, twelve or fourteen inches wide, and from a half to three quarters of an inch thick. I think Tyler struck him twice on the hand. I did not see him strike Tyler. I first saw Tyler making for Freeman, with his board. He was seized by convicts. Tyler told the men to let go of him; told Freeman to sit down. He sat there an hour or more, and then Tyler punished him. There is a good

deal of noise in that shop. The machinery and bogus make a good deal of noise. After punishment he behaved a good deal as before. He was sometimes obstinate. I could not see any difference. Have seen him since. I have never surmised that he was crazy.

Cross Examination.—I never discovered any change in his deafness. I suppose he merely grew deaf. I have seen him in the street since, and spoke to him, but can't say whether he heard me. I think he is a little deaf. I can't say whether he is more deaf than he was when in prison. The last time I heard him speak was when he was in the jail. I did not talk with him. He was asked a question, when he said he was deaf and couldn't hear. Mr. Holmes spoke to him. He put his hand to his ear and said he was so deaf he couldn't hear. Then Holmes spoke very loud. He made the same reply. He would have heard in the State Prison when spoken to as he spoke. My opinion was that he heard the first time and was feigning deafness.

Q. Would not such a blow as was struck by Tyler injure an ordinary person, in your opinion?

A. I should think not.

Q. Would not such a blow upon your head, with a board two feet long, injure you?

A. A board two feet long, over my head, would only raise the grit a little.

Q. Would it not cause pain in the head?

A. I don't think it would knock my brains out, nor kill me.

Q. Did you ever receive such a blow?

A. I don't know as I was ever struck over the head with a board of that description; but I think it would not hurt me at all.

Q. If the blow did not cause the deafness, do you know what did?

A. I don't. He was deaf when I first became acquainted with him.

Q. Are you one of the persons present at or near the house of John G. Van Nest, deceased, when the vote was taken to hang the prisoner?

A. I am.

Q. Did you vote in that assembly, either way?

A. I don't recollect.

Q. Did you not say he ought to be hung, or use words to that effect?

A. I was up at the house when the vote was taken to hang him, and I presume I said something. I think very likely I said he ought to be Lynched.

Re-Examination.—Q. How, and under what circumstances, did you make that remark?

Question objected to and overruled.

Q. What were you there for?

A. I went up there, with others, to see the dead bodies.

Q. Were you excited at seeing the dead bodies?

A. I probably was. They were among the most respectable people in the county.

Q. When you said he ought to be Lynched, did you think that the prisoner could not be brought to punishment in the ordinary way?

A. I did.

Q. Was there any other reason for saying so?

A. There was.

Q. Had you other reasons besides seeing the dead bodies and being excited?

A. Yes.

Q. What was your reason for thinking that Freeman heard when in jail?

A. His manner of treating what Mr. Holmes and myself said.

Q. Was the cell dark?

A. It was rather dark; there was light enough. It was light enough to see Holmes' lips.

CROSS EXAMINATION.—Holmes and myself both talked some when we were in the jail.

Q. In what tone of voice did you speak?

A. We spoke low, and the prisoner laughed.

Q. Did he laugh aloud, or only smile?

A. He laughed out so that we could hear him.

Q. Was that all there was in his manner that indicated that he heard you?

A. That was all there was in his manner.

RE-DIRECT EXAMINATION.—We conversed together in his presence about Freeman.

Q. What did you and Holmes say?

Objected to but allowed.

A. Holmes said to me, after speaking loud, "Bill begins to look old, doesn't he?" I told him his beard was long; that he hadn't been shaved since he had been there. Bill laughed out so that we heard it. Holmes said, "Bill, you are a hard case." He laughed at that. That was all that was said.

Q. How far were you from the prisoner when you and Holmes made those remarks?

A. It was eight or ten feet.

DAVID MILLS, sworn for the people, testified: I was foreman in the dye shop when Freeman was in the State Prison. I knew him there. He carried off yarn to the shop; was a good boy to work, but was partially deaf. I have noticed his expressions to-day. I don't discover any material alteration in his countenance. He looks paler than he did. I never discovered any thing that indicated insanity. [Witness further testified in substance as upon the traverse. See post.]

LEWIS MARKHAM, sworn for the people, testified: I reside in Auburn,

and have known the prisoner since he was a lad. I knew him in the prison when I was relief keeper in the spinning and cabinet shops. I have had no conversation with him since he came out. I do not discover any change in his countenance or appearance.

Asa Spencer, sworn for the people, testified: I never saw the prisoner until I saw him in court. Heard a conversation between Vanderheyden and Depuy, when Freeman was arrested and brought into town. The question was asked, whether they would make Freeman out to be insane. Depuy said he was no more insane than he was, but said he was ugly. Depuy said Bill would do well enough if they wouldn't give him liquor; that liquor would make him ugly and crazy.

Dr. David Dimon, sworn for the people, testified as follows: I am a physician, and reside in Auburn. I have seen the prisoner in the jail several times. I went the first time to gratify my curiosity, but subsequently I went at request, for the purpose of ascertaining the state of his mind. I have visited him some half a dozen times. Sometimes I remained there fifteen minutes; at other times half an hour or an hour. The first time I saw him was the first week after his arrest. I saw him in the early part of this month, and have been there within ten days past. I have talked with him about the events of his past life, and particularly about the murder. The conversation was conducted by questions and answers. From the examination of the prisoner I could not discover any thing which I should call insanity.

Cross Examination.—Q. What would you call insanity, Doctor?

A. Some derangement of the intellectual faculties, or of the passions, either general or partial.

Q. What do you call a derangement?

A. An alteration from a natural or healthy state.

Q. What do you call the intellectual faculties?

A. The faculties by which we reason, compare and judge.

Q. What do you call the affections and passions?

A. They are called the motive powers, or faculties.

Q. What are the intellectual faculties?

A. Comparison, judgment, reflection.

Q. What is comparison?

A. By comparison we compare two or more things with each other.

Q. What is judgment?

A. Judgment enables us to choose between two or more things, after comparison has done its work.

Q. What is reflection?

A. The comparison and judgment bestowed upon a subject.

Q. Where do you find this faculty of judgment described?

A. I have not given it from any author which I can name.

Q. Is there any such faculty as the will?

A. I don't know as the will could hardly be called a faculty.

Q. What is it?

A. The will is a power; a determination of the mind to do something. I wish to avoid going into a metaphysical discussion.

Q. What kind of a power is the will, physical or mental?

A. It belongs to the mental powers.

Q. What is the difference between the mental powers and the intellectual faculties?

A. I don't make any difference.

Q. Then you do call the will an intellectual faculty?

A. It does belong to the faculties of the mind. I don't think it is very properly called a faculty; a good many things go to make up the will.

Q. Where does it operate from?

A. I should be glad to avoid any metaphysical discussion about the will. I am not now prepared to go into it. The will is an operation of the mind. If the passions and affections are in action, they determine the individual to do something, and that is called the will.

Q. Is the will passive, then?

A. I cannot say that it is passive. I should call it active. The intellect directs the determination to do something; and that determination is the will.

Q. But what part do the passions perform?

A. The will is an operation of the mind; the passions and affections determine the act. The will is the result.

Q. What has judgment to do with the will?

A. It directs the will. It takes both the judgment and the will to choose.

Q. What is reason?

A. Reason is an exercise of the intellectual faculties.

Q. Is reason a faculty of the mind?

A. I should not call it a faculty. It embraces several faculties—memory, comparison, judgment, and some others, all form the reason.

Q. Have you any experience in the treatment of the insane?

A. I have not. I have seen many in the Alms House at Philadelphia.

Q. Have you seen persons that you would not know to be insane from observation?

A. Yes, and I have seen those that I should know to be insane, without being told.

Q. Have you ever been called upon before to determine a question of insanity?

A. I never have been except in this instance.

Q. Did you ever discover insanity in any one who was not before known to be insane?

A. I think I can say that I have.

Q. Where?

A. In the State Prison; a convict.

Q. What was his name?

A. I do not know his name.

Q. When did you make that discovery?

A. Some two or three years ago, when my brother was the physician there. I went in with him to ascertain whether a convict was insane.

Q. Then you had been told of the case before you went?

A. My brother had told me of the case, and wanted me to see whether he was sane or insane.

Q. How did you find him?

A. I found him insane—general insanity. The only question was, whether he was feigning it.

Q. What was the species of that insanity?

A. I can give no further account of it except that it was a case of general insanity.

Q. What was the result of that case?

A. I never heard of him afterwards.

Q. Have you ever treated a case of insanity professionally?

A. I have not. I have seen cases of melancholy which I have treated as the first stage of insanity.

Q. How does melancholy affect the mind?

A. It affects the disposition, conduct and habits, but does not necessarily derange the intellectual faculties.

Q. Do you consider melancholy insanity?

A. I should regard any state of melancholy an incipient stage of insanity.

Q. Is not the mind more or less diseased in a case of settled melancholy?

A. The mind is diseased, yet some people compare, judge, recollect and imagine well, notwithstanding.

Q. Will they not do all things that a sane person will do?

A. Yes.

Q. How, then, do you recognize it as insanity?

A. Because insanity frequently commences so.

Q. Did you say to Doctors Briggs and Fosgate, after visiting the prisoner in the jail, that you now thought him insane?

A. I never did say so to either of them. I have had but one opinion about the prisoner's sanity.

Q. Are all the prisoner's intellectual faculties in order?

A. All that he possesses. I cannot discover that any of them are deranged.

Q. Do you believe in an insanity that disturbs the moral powers or faculties?

A. Yes; and without any appreciable disturbance of the other faculties.

Q. Then you admit that moral insanity may exist?

A. I admit the principle of moral insanity as a disease of the brain.

Q. Are Freeman's moral powers in a healthful state?

A. I suppose that they are as they were by nature; that is my opinion now.

Q. Do you believe his passions and feelings to be in all respects healthy?

A. I think they are not diseased. I presume he is more depraved than he was; that it has grown with his growth and strengthened with his strength.

Q. Please to state your grounds for that conclusion?

A. I made two inquiries; first, whether he is in possession of reason; secondly, whether that reason is impaired by some partial insanity.

Q. What physical appearance would you look to?

A. In the maniac there is a wild, glassy expression of the eye, and generally a paleness. There are expressions and looks which persons of experience can detect.

Q. Have you ever visited the Asylum at Utica?

A. I have not.

Q. Do maniacs smile?

A. They do. The smile of the maniac is very peculiar and unmeaning.

Q. Is not the smile of the prisoner peculiar?

A. It is somewhat so.

Q. What is the degree of the prisoner's intelligence?

A. It is small even for a negro. It is difficult to tell the degree of his intellect, he is so very ignorant.

Q. Can you compare it to any thing?

A. I should think he had not as much intellect as an ordinary child of fourteen years of age. In some respects he would hardly compare with children three or four years.

Q. With a child of what age would you compare him in respect to knowledge?

A. His knowledge would compare with a child three or four years old.

Re-Examination.—Q. Have you any doubt now as to his sanity?

A. No. Some things have come up on this trial that appeared singular, yet they have been explained by subsequent testimony.

Q. Do you mean to say that his mind is as a child, or that his information is only like that of a child?

A. I mean to say that upon some subjects his information is as limited as that of a child. It is impossible for me to compare the native strength of his intellect with a child of any age.

Silas Baker, sworn for the people, testified: I am keeper in the carpet shop in the State Prison. Have known the prisoner since August, 1843. He was employed in the dye house pretty much all the time whilst in prison, after I first knew him. His general conduct was good. I don't discover any perceptible alteration in him. He had some peculiarities in rolling his eye and carrying his head, as he now does. When in the prison I conversed with him about the prison and the rules to be observed there. I had occasion to punish him twice, once for striking another convict with a club. On asking him why he did it, he said, he would not have the convict meddle

with his things. It appears that he had greased a pair of boots, and one Aikin, in moving wood on which they were placed, had knocked them down. I punished him and he promised to do better. The other punishment was for something growing out of the hanging out some yarn. I never discovered any thing that I supposed to be insanity, except his disposition to seek revenge for some fancied or real injury. He never sought revenge, as I know of, except on those two occasions. [Witness further testified as upon the traverse. See trial.]

JOSEPH MORRIS, sworn, testified: I am a blacksmith, in Auburn. About a week before the murders Freeman came to my shop and asked me if I could make him a knife. I asked what kind of a knife he wanted made. He picked up an iron and tried to describe it. I then described to him a sticking knife for killing hogs, with an edge on both sides. He said that was not what he wanted. I then told him to whittle out a pattern. He went out and came back in fifteen or twenty minutes with a pattern, (being the one here produced.) I inquired what he wanted the knife for. He asked what I should charge for it. I asked him if he wanted it made of cast steel. He said yes, he wanted it made out of good cast steel. I told him I should charge him four shillings. He said he thought I could afford to do it for two shillings. I then asked him what he was going to do with it. He made no reply. I then said, "you are going to kill some body, ain't you?" He said IT WAS NONE OF MY BUSINESS, SO LONG AS I GOT MY PAY FOR IT. He asked me again if I couldn't make it for two shillings. He said that was enough. I told him I shouldn't make it short of four, and he said he would give me the four if I would grind it and put a handle on it. I said I couldn't do that, and he went away, but came again on the Saturday following. I was busy, and I don't know as I then spoke to him. I did not make the knife. I discovered nothing that made me think he was crazy. He appeared to be deaf, and it was very difficult to make him hear. I thought him keener than many men about making a bargain. He left the pattern at my shop.

CROSS EXAMINATION. Witness says: He came to my shop between two and four o'clock in the afternoon. Don't recollect how the conversation began. He did not call me by name, but asked, "can you make a knife?" I found he was deaf, and I talked loud to him—louder than I now do. When I asked what kind of a knife he wanted, he tried to describe it out with his fingers, and showed me that he wanted one with two edges. He picked up a piece of iron and tried to describe it on that. I told him he had better go to the carpenter's shop and whittle it out. He went, and after being gone about half an hour he came back with his model. I asked four shillings for making such a knife. He said he thought I could afford to make it for two. I told him I couldn't. He said he would give me four if I would put a handle on and grind it, which I refused to do.

His reply was, when I asked him if he wasn't going to kill some body with

the knife, that, "It's none of your business if you get your pay for it." On Saturday he stayed there half an hour, but said nothing to any body. On Thursday he was there an hour I should think. I asked a man by the name of Smith, who was in there, if he knew him. He said he didn't.

RE-EXAMINATION. When I asked him if he wasn't going to kill some body, I was joking. I did not suppose he was in fact going to kill any body.

GEORGE W. HYATT, sworn for the people, testified as follows: I am a blacksmith, and live in Auburn. I saw Freeman, for the first time, on Monday of the week when the murders were committed. He came to my shop. My journeyman informed me that the prisoner wanted a knife. I then went to my desk and took out three or four, which I showed him. He selected one and asked what I charged for it. I told him two and sixpence or three shillings. He asked if I wouldn't let him have it for one and sixpence. I told him I could not afford it, but finally let him have it for that price. At his request I finally put on a handle. The knife now in court is that knife. I helped him grind the knife. The next time I saw him it was at the coroner's inquest at Van Nest's. The notch was not broken out at the time. I discovered no insanity in him then.

CROSS EXAMINATION. He came to my shop at nine or ten o'clock in the morning. The knife bought by him was made out of a file. He appeared to be hard of hearing. I did not know him, but supposed he was a poor man with a family; and I let him him have the knife at that price, and put a handle on it, as a matter of charity. He handed me twenty-five cents when he paid me. On the same day, in the afternoon, he was in my shop and wanted a rivet put in a jack-knife. He then asked what I would charge. I told him six-pence. He said that was too much; three was enough. I told him I would make the rivet, and he might put it in. He might have been there twenty minutes at that time. He paid me three cents, said nothing more, and walked out. I have seen the prisoner in jail. Saw him three or four weeks afterwards. I went to the grates and undertook to converse with him, but he took no notice of me. I spoke again and beckoned to him. He leaned forward and said he was deaf and couldn't hear. I tried two or three times to make him notice me, and asked him if he knew me. He said he couldn't hear. He looked downcast.

ROBERT SIMPSON, sworn for the people, testified: The prisoner came to my chair and turning shop a day or two previous to the murders. He had a large butcher knife with him when he came the first time. The day after he came again. He then had a large hickory club or cane, three or three and a half feet in length. The knife produced is the knife he had the first day. He asked me to grind the knife. I told him I hadn't time, but I would put the belt on the wheel and he might grind it. I did so and noticed how he ground it. He then went up to the bench and whetted it. He then laid down three cents on the bench, which he took from his wallet, and went out with the knife. The knife was ground edging both ways. He came again

to the shop the following morning. He went across the shop and took up a bit. I nodded assent, and he went to boring a hole in the end of his hickory club. He placed the stick in a vice, and was engaged in boring it ten or fifteen minutes. When he was boring it his face was towards me; when he was fitting it his back was towards me. I asked no questions, nor did I see what he was fitting into the stick. He was there from ten to thirty minutes. I think it was the day previous to the murder, but it might have been the second day morning before. I saw nothing only the club. The second day he bored the club with a longer bit. He then worked at fitting something into it, and then went out, after which I saw nothing more of him. I saw no insanity in him.

Cross Examination.—I had seen the prisoner before that time, but had no acquaintance with him. Mary Ann Newark's dwelling was but a short distance off; not to exceed eighty or a hundred rods. Freeman came to the shop the first time just before dinner. It was after dinner when I saw him. After he whet the knife I took it. I handed it to him again, when he laid it down; took out his wallet, and from it took three cents which he laid down on the bench.

Harry Lamkin was then sworn for the people, and testified: I keep a tavern in Port Byron in this county. About a fortnight before the Van Nest murders the prisoner came to my house with three other black fellows, on Sunday; one of them was called Dick. They drove up, put their horses under my shed, came in, and Freeman called for four glasses of beer, which they drank. Soon after this Dick asked Freeman if he had paid. He said he had. Freeman then gave the white man a shilling for bringing up the horses. They then left. I have also seen the prisoner since he has been in jail. When at my house he appeared to be in conversation with the rest of his company, although he did not talk as much as the others. He did not act crazy. I saw no evidence of insanity in him then, any more than I now see in the people around here.

Cross Examination.—The prisoner was in my bar-room an hour and a half. When they were about to go, he said, "boys, I guess we had better go home." I don't remember any thing else that he said. The darkies were talking together. I did not suppose any of them were deaf. I didn't see any crazy actions.

Q. What would you consider crazy actions?

A. I should consider a man clawing around, acting simple, and asking a great many questions, and laughing at foolish things, crazy.

Q. Have you ever seen any crazy persons?

A. I saw a man by the name of Owen Razee, near Sherwood's Corners, and have seen fellows on the canal kind o'crazy.

Q. Did you ever see a crazy person who did not talk at all?

A. I never did.

Q. I understand you to say Freeman talked but little when at your house?

A. He did not talk as much as the rest. I recollected of his saying, "boys, I guess we had better go home."

Q. Do you recollect of his proposing any thing else that day?

A. I don't, only when he called for beer he said, "give us some beer."

Q. Do you pretend to say that he paid for the beer?

A. I won't say certainly that he paid for it, but I suppose he did.

ALVAH FULLER, called and sworn for the people, testified as follows: I live in Auburn and know the prisoner; have seen him since he has been confined in jail. I saw him in this court house in February last, during the time of Wyatt's trial. He was standing on the seat yonder in the corner, when I saw him. I told him to get off the seat which he was standing on. He didn't get down. I then took him off and shook him. I saw him on the seat with his feet more than once. I should think I saw him in the court room two or three days running. I was then assisting the sheriff at the jail and at the court house. About the middle of March the prisoner was brought to the jail for the murders. I talked with him, but he only answered such questions as I put to him. He sometimes asked me for tobacco. He seemed to hear at one time better than at others. He eat well in jail. He never complained about sleeping. His health appeared to be good. I don't see any difference in him from the time I first saw him till now. I noticed that he did not answer people who came there to see him as readily as he did me. I never myself thought him insane.

CROSS EXAMINATION.—He once told me that his wrist pained him. He had a cut on his wrist. The night after he was brought to the jail I went in and asked him if he wanted blankets. He said yes. I took him in some. He appeared deaf. I took in his breakfast the next morning and asked him if he wanted something to eat. He then said yes. Once he spoke and said there wasn't any water in the cup. Two or three days after he was brought to the jail he complained again of his wrist, and said the bandage was tight. I asked if his wrist pained him. He said it was a little sore. He said the doctors told him that the irons were so heavy that they might make a sore, and he might have his leg taken off, and that it might kill him. I asked him if he was afraid to die. He said he wanted to live a little longer.

DANIEL ANDRUS, called for the people, and being sworn, testified: I reside in Auburn, and have about thirteen years. I am a counsellor at law, and am in practice here. I have known the prisoner since he lived with Cadwell. He drove Cadwell's team. Cadwell was the agent of Van Buren, Corning & Co., for whom I did business in those days. The boy once drove team to plough my garden. He also drew wood for me. After he was discharged from the State Prison he came to my office. I asked him if he wanted any thing. He said, No; that he only came to see me. I asked him how he fared while in prison. He said sometimes very well; but sometimes he had bad meat to eat. He complained of the keepers, and said they abused him very much; that they whipped him when he didn't deserve it.

He then asked me if I had any work for him to do. During the trial of Henry Wyatt for murder, I saw him in the court house several times. Sometimes he was in one part of the house and sometimes in another. Some part of the time he was in the second row of seats. I saw him here several days. Robert Freeman, a colored man, living with me, was here with him several days. He was a pretty hard boy when he lived at Cadwell's. He was rather small, but was pretty good at his business when acting under directions. I see no difference in him only in his size and his deafness. He carries his head on one side. I see no difference in his eye. I have not seen any thing in him to induce me to believe that he is insane.

Cross Examination.—He was an active boy when he worked for me. When he ploughed for me he only drove the horses; I held the plough. I presume I told him how to drive the horses. He ploughed for me about an hour. He was a sprightly, but a hard boy, and sometimes quarrelsome. I have had but little chance to form an opinion of his capacity since he came from prison, but in what I have seen of him, I discovered no change.

Walter G. Simpson, called and sworn for the people, testified: I reside in Auburn and know the prisoner. I knew him when he lived at Cadwell's. He was rather a singular boy in many respects. He had a singular cast of countenance and singular expression with his eyes. [Witness further testified in substance as upon the traverse. See trial.]

George B. Chase, sworn for the people, testified: I reside in Auburn and know the prisoner. I had a contract with the State for convict labor in the business of cutting stone, when he was in the prison, and he was one of my men part of the time. In 1842 he worked at blowing and striking. That work he could do well enough, when he had a mind to. He was not always of a mind to do well, however. He sometimes helped load and unload stone. He generally behaved well, although he would sometimes get careless, and the blacksmith would complain to Mr. Green, the keeper of the shop, who would often threaten to punish him. I would intercede for him and beg him off. Did so several times. I never heard him called crazy, nor never saw any thing that made me think him crazy. I have seen him in jail, and have noticed him in court, and do not perceive any change in him.

Nathaniel Hersey, sworn for the people, testified: I live in Auburn. I got acquainted with the prisoner nine years ago. Have seen him about the village since his release from the State Prison. I saw him the day before the Van Nest family was murdered. I saw three knives in his possession about a week before the murders, a large butcher knife ground—also an old butcher—also a straight knife. Had them done up in a paper. He showed me the new one. I had some conversation with him. John De Puy was in the grocery. Freeman heard him say something about him, when he called me out of doors, where he said to me that he'd been round where they

were talking about him. He wished they would let him alone. He said he wanted to get some liquor, but John had been telling folks not to give it to him. He said he meant to kill John because he took his money away from him, and wouldn't let him have it. He said when he was at work at Port Byron John went down to get his money, and he had to let him have it. He said when he did work John took his wages up, and would not let him have any. He told me that he had found Van Nest's folks. I asked him who they were. He said the widow woman that put him into prison. He said he meant to kill her because she put him into prison wrongfully. I did not tell John what he said.

Q. Why didn't you mention it?

Objected to. The court decided that the witness is at liberty to answer it or not, as he chooses.

A. I did mention it the same night to Mr. Stephen Titus, who keeps a boarding house in town. I told him about it a week before the murders.

Cross Examination. The prisoner was a lively, smart boy. He did not talk a great deal. He laughed and played when he had any body to play with. He was good natured, quick to understand. He talked right off, like other folks. I have not the least idea he was underwitted. He didn't hear as well when he came out of prison as before he went, but appeared to understand when he did hear. He said he lost his hearing by their rapping him on the head.

Peter W. Williamson, sworn for the people, testified: I resided in Fleming at the time the Van Nest family were murdered. I was at the house of John G. Van Nest from five or six o'clock until half past nine o'clock on the evening of Thursday, the twelfth day of March, being the night when the murders were committed. When I went there Mrs. Van Nest and Mrs. Wyckoff were gone out a visiting. Mr. Van Nest, Van Arsdale, Miss Holmes and the three children were at home. Mrs. Wyckoff and Mrs. Van Nest came home soon, and all had left the room when I left except Van Nest and Van Arsdale. All the rest had retired for the night except Mrs. Van Nest, who had gone through the back kitchen out the door. It was about half past nine o'clock when I left there for home. When about a hundred rods from the house I heard the dog bark, and some one halloo, or shriek. I went on fifteen or twenty rods further, when I heard, as I supposed, four or five voices shrieking. I then made my way home as fast as I could conveniently walk. When I got a little north of the Sand Beach meeting house, I heard some one coming behind me on horseback. When he passed me his left leg brushed my right arm. It was a negro on horseback. When he got a rod or two past me I recognized the horse, by his gait, as belonging to Mrs. Wyckoff. I saw something hanging on his left side which I supposed to be a club. I supposed he had a Webster coat on, gray or of some lightish color. There was a bright moon-light when he passed me. I was then about a half a mile from home. After the negro passed me

the thought occurred that he had been there and stolen the horse. When I arrived home I mentioned what I had seen, and what I mistrusted had taken place, and concluded to get up my horse and ride over and notify Mr. Van Nest of the circumstance. I did so, and as I approached the house I saw a light at the front gate, from which I inferred that they were already apprized of the matter. As I advanced nearer to the light, I saw a Mr. Farmer and the muzzle of a rifle pointed at me. He, however, recognized me before I did him, and inquired of me how I had learned the news so soon. I told him I had heard no news, but that suspicion had drawn me there. He then told me that Van Nest and his wife were killed, and the family stabbed. [Witness further testified in substance, as upon the traverse. See the trial for murder.]

Edwin Tuttle, sworn for the people, testified: I know the prisoner by sight. Saw him in Brown's grocery the day the murder was committed. He bought some soap there. He asked for and got three cents worth of soap. He gave me a six-pence; I returned him the change. I noticed nothing indicating insanity.

James Amos, sworn for the people, testified: I reside in Oswego County. I saw the prisoner on the thirteenth of March last, about two o'clock in the afternoon, at Pennell's Mills. When I first saw him he was coming out of Gregg's tavern, and was going towards the shed. By the time I got there, he was coming out of the shed with a light gray mare, with a sursingle and blanket on. He asked me if I wanted to trade horses. I answered no. He asked if I wanted to buy one. I replied in the negative, and he said no more to me then. He offered to sell him for eighty dollars to Mr. Corning. [Witness further testified in substance as upon the traverse. See his testimony.]

Dr. Leander B. Bigelow, sworn for the people, testified as follows: I am a physician and surgeon, and at present I am physician and surgeon to the State Prison, at Auburn. I knew the Freeman family, but have no distinct recollection of the prisoner, until 1845. He visited the hospital but twice whilst I had charge of it. I recollect that in February, 1845, he came to the prison hospital, and complained to me of ear ache. He was prescribed for and he left. He came in again in July, and complained of costiveness. I gave him a cathartic and he left. These were the only times he complained of illness to me. I went to the prison in January, 1844, and left in September, 1845. I have no distinct recollection of his appearance, but remember that he was deaf. Since he has been in the jail I have visited him, at request, several times, in company with others. When others were present, he seemed confused, and I consequently visited him alone. I examined him with care, and at considerable length, committing my questions and his answers to writing. The first visit I made him, for this purpose, was in the evening of the twenty-fourth day of June. [Witness further testified at very great length, detailing minutely the questions put, and the answers given,

the state of his pulse, his general health, as upon the traverse, and concluding with the opinion, that the prisoner is a "dull, morose, depraved, degraded negro, but not insane." See the trial.]

Dr. Jedediah Darrow, sworn for the people, testified: I am a physician, and have been forty-four years. For ten or twelve years my principal attention was diverted from my profession. After being subpœnaed to attend on this trial, I visited Freeman in his cell, to form an opinion as to his saneness of mind. I asked him a number of questions and received answers. Was in the cell from twenty to thirty minutes. Doctors Bigelow and Hyde were present at the time, and as they proposed to me that I should ask questions, I was engaged in talking nearly all the time I was there. I discovered nothing that looked to me like a shade of insanity. [Witness further testified as upon the traverse. See trial.]

Dr. Sylvester Willard, sworn for the people, testified: I have practiced medicine twenty-three years. I have been six or eight times to see the prisoner in the jail. I engaged his attention, and requested him to tell me all about the matter for which he was imprisoned. I began by saying, "Bill did you kill them?" He answered, "yes." I asked, "what did you kill them with?" He said, "well, I killed them with a butcher knife." I asked, "where did you get your knife?" He said, "why, I bought it—I bought two." I asked, "what did you give for them?" He said, "I gave one and six-pence for one." (I don't remember as to the other.) I asked him what he did with his knife after he bought it. He said a man helped him to grind it. [Witness testified at great length, detailing the particulars of his examination and concluding with an opinion that the prisoner is not insane, in substance as upon the traverse. See his testimony on the traverse.]

Dr. Joseph Clary, called and sworn for the people, testified: I am a physician. Have been in practice thirty-five years. I have visited the prisoner, with others, three times, for the purpose of examination; the first time with Mr. Morgan and Dr. Pitney, the second time with Dr. Willard and Mr. Austin, and the third time with the Rev. Mr. Anderson. I had some conversation with him each time, and heard conversation that I did not participate in. I inquired into the state of his health, examined his pulse, also his tongue, and inquired respecting his appetite. I have seen so little of insanity that I don't know as I ought to express an opinion. I am not prepared to call him an insane man, or to say positively that he is sane. I have not that clear conviction which removes all doubt or hesitation. I think, however, that he has none of the varieties of insanity that I am acquainted with.

Dr. Charles A. Hyde, sworn for the people, testified: I am a physician. Have been in practice twelve or thirteen years. I have visited the prisoner in the jail twice, for the purpose of examination. I went with Doctors Willard, Dimon, Darrow, Pitney and Hermance. I saw nothing to make me think he was insane. I had not seen him before going to the jail.

From seeing him only twice, it would be difficult to say that he was insane. I was rather of the opinion that he was not.

JOHN P. HULBERT, sworn for the people, testified: I am a counsellor at law, and was in court during a portion of the trial of Henry Wyatt, in February last, for murder. I am confident that I saw Freeman in court more than once during that trial. I think on several days. I saw him when he was brought to the jail. Have seen him in the jail since. He said but little. Dr. Fosgate was dressing his wounded hand. My attention was not called to his insanity then, but only to his deafness. I saw nothing like insanity about him. I have read considerable on the subject of insanity. I give my opinion, however, from what I saw.

BENJAMIN F. HALL, sworn in behalf of the people, testified: I reside in Auburn. Have seen the prisoner several times since his discharge from the State Prison, but never observed him particularly until the day he was brought into town for the killing of the Van Nest family. I have seen him but once since, except in court. That was on the morning of last Thursday. Whilst I was at the jail, Dr. Thomas Spencer, of Geneva, came there, as he said, for the purpose of making an examination of the prisoner. At his request I accompanied him to the cell where the prisoner was confined, and endeavored to converse with him. The Doctor desired me to question him concerning matters within his comprehension, where I might be able to determine whether he answered correctly. I did so, and took a note of my interrogatories and his answers. [Witness further testified in substance as upon the traverse, recounting the dialogue with the prisoner, and concluding with the statement that he appeared to have some mind, although of a very low order; that the interview was insufficient to test his sanity; but in the slight examination so made, he did not discover any such derangement of mind as constituted any form of insanity that he was acquainted with. See his testimony at length on the traverse.]

ALONZO TAYLOR, sworn in behalf of the people, testified: I reside in the town of Cato. I arrested Freeman at Gregg's tavern, in Oswego county, on the charge of murder. He was at his supper when I arrested him. He was there in detention at the time. When accused of the murder there he knew nothing about it. I then told him he did know about it. I said "You black rascal, you do know about it." He looked up at me, rolled up his eyes and grinned. I raised my cane at him. Some one said, don't strike him. I spoke to him again and alleged the murder, and asked him how he came to kill that innocent child. He said he didn't know any thing about it. I then took my chains out of my pocket. Some one said I'd better stop till he had done eating. I waited at the back of his chair eight or ten minutes. After he finished his supper I told him to stand up. He was then searched thoroughly. We found but one penny in his pocket. I then told him to sit down. He did so, and I ironed him. After that a couple of men wanted to take him into another room; thought they could get something

out of him. After they had been there awhile, word came to me that the negro wanted to be protected. I then went in. He said to me, "I want to be protected. I don't want to be kicked and cuffed around in this way." I said "I guess they have not hurt you." He said, "Yes they have." On our way to Phœnix, I said to him, "Bill, how could you kill that poor innocent child." He said, "I didn't know it was a child." I had Burrington's horse with me. I brought the horse to Phœnix, and gave it up to the owner. I asked him what he had done with the horse he stole. He said, "They've got it." When he spoke about their kicking and cuffing him, I asked what they had been doing it for. George Parker replied, that they wanted to warm up his ear-wax so as to make him hear better. I could not make him answer, nor get any thing out of him. [Witness further testified as upon the traverse. See trial.]

Cornelius Van Arsdale, sworn for the people, testified: I was at Van Nest's at the time of the murder. Williamson was there in the evening, but left at about half past nine o'clock. When he left I retired up stairs to bed. After I had been in bed about five minutes, I heard a woman scream. I raised up in bed, but seeing no one I laid down again. In less than a minute I heard Mr. Van Nest speak to some one and ask what he wanted. Next I heard something heavy fall on the floor. I then got up and put on my pantaloons. Whilst doing so, I heard scuffling in the hall below. I then stooped over to put on my stockings, when I heard the stair door open and heard some one ask if there was a man up there. As I raised up I saw a negro coming up stairs with a butcher knife in his hand. He came so near that the point of the blade was but about eighteen inches from me. The knife presented is the one found there. He stabbed me in the breast. It struck on the breast bone and glanced off to the left side. I pushed him off, took his candlestick out of his hand and threw it at him, and he fell from the top of the stairs to the bottom. I followed him down and seized a broomstick at the bottom of the stairs, with which I struck him several times. He escaped as fast as he could out the front door. I then shut the door. I then discovered the front hall door was open. Mrs. Wyckoff was just then going off the steps. I called to her, but she went towards the gate where she again met the negro and had a scuffle with him, but after getting through the gate she went south and he went north. [Witness further testified in substance as upon the traverse. See trial.]

Helen Holmes, sworn for the people, testified: I was at the house of John G. Van Nest the night when he and his wife and child were murdered. I had retired to bed in the north-west bed room. Julia slept with me, Peter with Mrs. Wyckoff, and George W. in the sitting room with his parents. The first alarm I had was a scream from Mrs. Van Nest out doors, and the bark of the dog. I raised the window and asked what was the matter. She came to the window and said, "Some one is here and going to kill us all;" she was stabbed and expected we were all going to be killed. She went

round to the front side of the house, and I went and opened the hall door and let her in. She went into my bed room and laid down upon the bed. We told Mrs. Wyckoff, and she got up and went out into the hall. I soon heard a scuffle there. I waited until I heard a noise up stairs, and I then went out into the sitting room. I went for Mr. Van Nest, and found him near the kitchen door on the floor, dead. I then shut the back door of the kitchen and went into the sitting room, where I saw the prisoner looking in at the window. Don't think he saw me. He then kicked the door open but did not come in. I don't think he saw me then. There was a candle in the kitchen; not in this part of the house. The negro had something in his hand when looking in at the window, and I thought it was a gun. Mr. Van Arsdale told me not to stand before the window. He went around the house and then came back; went to the gate, and then went north. I watched him until he got near the barn yard gate. [Witness further testified as upon the traverse, and identified the prisoner as the negro. See trial.]

Edwin P. Hoskins, sworn for the people, testified: I am under sheriff of this county. I arrived at the house of the deceased about four o'clock in the morning. Found a knife that looks like this, in the door yard, between the door and the gate, about fifteen feet from the door steps. I have seen the prisoner in court and two or three times in jail. The day after he was brought in I had a short conversation with him. He had on a Webster coat and dark pantaloons.

Augustus Pettibone, sworn for the people, testified: I am sheriff of this county. I reside in the jail building, and have seen the prisoner every two or three days since he was brought there, but have not had much conversation with him. His health appears to have been good; his appetite has been good and he has seemed to be well and hearty. I do not know how he has slept. Have heard no noise at night except one night when we forgot to give him his bed. He made some noise then. I brought him from Van Nest's house in a covered carriage. I saw him when the dead bodies were shown to him. It didn't seem to make any impression on him. I halted with him at the bed side to see if it would have any effect on him, but it did not produce any emotion. [Witness further testified as upon the traverse. See trial.]

Joseph Quincy, sworn for the people, testified: I keep a barber's shop in Auburn. Am partially acquainted with the prisoner; knew him before the murder. He was at my shop twice; the last time was just before the week of the murders. He asked me to shave him. I told him I did not shave colored men. He said he wanted his whiskers shaved off. I told him I could not shave him, nor did he shave himself at my shop. He had little whiskers on the side of his face at the time.

Dr. Thomas Spencer, sworn for the people, testified: I am a physician and surgeon. Have been in practice a little over thirty years. Have

been solicited to examine the prisoner in respect to the condition of his mind. Since the commencement of this court I have examined him at different times; can't tell the number, but from eight to a dozen times. Have not had a great deal of conversation with him. When in the jail there always have been others with me. Have asked him questions and prompted questions for others to ask. I have made some memoranda of them, which I now have before me. I have felt his pulse from time to time when he was lying, sitting and standing. I once found him asleep, with pulse at sixty-seven. After rising it was at one hundred and fifteen. I once before found it at sixty-seven. Eighty-six has occurred two or three times when he was standing. I found no deviation from his usual health, except nervousness, occasioned by his confinement. The variableness of his pulse was not the least indication of insanity. [The witness testified at great length on both his direct and cross examination, as to the examinations made, his deductions therefrom, and his views of insanity, in substance as upon the trial for murder. He was confident that the prisoner was not insane. See his testimony on the trial.]

STEPHEN TITUS, sworn for the people, was interrogated by the attorney general as follows:

Q. Did you hear the testimony of the witness Hersey?

A. I believe I did.

Q. Did he tell you before the murder of the Van Nest family that he intended to kill them?

MR. SEWARD objected to this interrogatory, as calling for information which, if given, would not be admissible evidence. After argument, the court overruled the question, and the witness left the stand.

MR. VAN BUREN then announced that so far as he was advised he was prepared to rest the case for the present, but in doing so he wished to reserve the right to call other witnesses if it should become necessary.

MR. SEWARD hoped that the attorney general would proceed with his defence to this plea until his proof was all out. He (Mr. S.) held the affirmative of the issue, but did not wish to reply to the evidence of the people until he could reply to all the testimony to be given by them on this issue.

MR. VAN BUREN remarked that his associate informed him that there were other witnesses for the people not then in court, which it would be necessary and proper to examine. He was aware of the rule on the subject, but in a capital case he would submit whether it were not to be so construed as most to conduce to the administration of the law and the ends of public justice. He wished to examine witnesses in relation to the stealing and the stabbing of the horse.

The court desired to hear all the testimony in the case, but wished to observe the rules applicable to such trials. They were unwilling to dictate counsel in a case involving human life, yet they hoped the trial might proceed in order. It might be proper to hear testimony after a party had rested, under some circumstances.

Mr. Van Buren then said the people rested; whereupon the counsel for the prisoner called, as a witness,

Dr. John McCall, who being sworn, testified as follows: I am a physician, and am now President of the Medical Society of the State of New York. I have practiced medicine about thirty-five years. I have made several examinations of the prisoner in the jail.

Q. Please state what occurred, and the result of your examination?

To this the attorney general objected. The question put sought for further facts bearing upon this issue; facts not in reply to the people's testimony, nor under any rule admissible, after the prisoner's counsel, holding the affirmative as they do, have once rested their case. An argument involving the rules at nisi prius, the importance of this case to the prisoner, the difficulty of procuring witnesses from a distance, and the understanding of counsel as to the intimation of the court when the prisoner's counsel rested, was entered into by the counsel on both sides, in which it was stated that the witness had been in attendance for several days prior to the time when the prisoner's counsel rested, but was called home by sickness in his family, and for that reason only he was not present when the prisoner's testimony was closed.

The court, after conferring together, announced as a decision that the testimony, as to the preliminary facts, except as to the stolen horse, on both sides, must be held to be closed.

To this the counsel for the prisoner excepted.

The district attorney, by permission of the court, then proceeded to call witnesses to testify in relation to the horse, and thereupon called

William H. Brooks, who, after being sworn, testified: I was at the house of the deceased the same night he was murdered. Went for a physician to Auburn. Saw on my way Mrs. Wyckoff's horse, a little beyond New Guinea. He was lying down. Had a halter on. The horse was taken back by Harrison Mastin. The horse was stabbed on one side, back of fore shoulder. I was at home and in bed when Mrs. Wyckoff came to my house the night of the murder. She had a night gown and stockings on, and a butcher knife in her hand.

Harrison Mastin was next sworn for the people, and testified: I recollect the night of the murder, and Mrs. Wyckoff's horse. I found it. I lived at the foot of the Owasco Lake at the time. Mr. Williamson came to my house about half past ten o'clock that night, and told me what had happened. I came down towards Auburn, and found Mrs. Wyckoff's horse near New Guinea. He was just getting up. I looked at him and then came to Auburn, and when I went back I took him home. There was blood on the halter. There was mud on the horse. Horse was old and seemed to be tired. I think he fell near the sluice way, from the appearance of the ground.

The counsel for the people then rested the case.

Mr. Seward then raised the question of the examination of Dr. McCall, in respect to his knowledge of the prisoner which he derived from his exa-

minations before his return to Utica. He alleged that it was conceded that the Doctor had been in attendance for a number of days as a witness, but from intelligence of sickness in his family he had been compelled to return home, and thus happened to be absent when the counsel for the prisoner rested the case. If not so conceded, he desired to show the same by the testimony of the witness himself, to the end that the fact might be entered in the case. He was of opinion that his testimony was important to the prisoner, and believed that justice would be subserved by his examination now. When the attorney general was urging his right to examine other witnesses in case he should deem it necessary, he expressed the opinion that the rule should be so exercised as to be most conducive to the proper administration of the law and the ends of public justice. That argument then availed. How much stronger is its force when it comes in behalf of the prisoner, who is pennyless and in chains, without either the power or the knowledge to obtain witnesses for himself or to retain them in court a single hour. If ever there was occasion for judicial discretion, or the merciful construction of any rules, he (Mr. S.) submitted that the present was a case demanding its exercise.

The court adhered to their former decision.

Mr. Seward then requested the court either to note the fact or allow proof that Dr. McCall was in attendance until Saturday last; that the court adjourned on that day at three o'clock in the afternoon; that witness went home, where he was detained by the sickness of his family until Tuesday morning.

The court intimated that a note to that effect would be made in the minutes of the trial.

Dr. John McCall was then re-called, and interrogated concerning the prisoner, as follows:

Q. Have you visited the prisoner in his cell to-day, yesterday, or the day before?

To this the attorney general objected. The question came within the decision already made by the court, and he insisted that it should be observed by the counsel. It was objectionable, also, because the testimony for the people had closed in respect to the main facts, and he was unwilling to have any new matter thrust into the case.

The court, after consultation, decided that the witness might testify to any facts that transpired at any interview at which the witnesses for the people were present, but not as to any facts that took place at any other time.

To this decision the prisoner's counsel excepted.

Q. Were you present at any interview with the prisoner when Dr. Brigham was present?

To this the attorney general objected, and animadverted upon the prisoner's counsel.

Mr. Seward appreciated the decision already made by the court, and

the animadversions of the attorney general. He was disposed, nevertheless, to put the question, and to urge the court to permit an answer. Dr. Brigham had already testified about an interview with the prisoner when Dr. McCall was present, and he desired that Dr. McCall might be permitted to testify of that interview, and what there transpired. He urged it for an insane man, who was unable to communicate to his counsel a single word in relation to his defence. To testify of that interview was not new matter, but was admissible under wholesome rules, both of evidence and propriety.

The court overruled the question, and the prisoner's counsel excepted to the decision.

Q. In your opinion is the prisoner sane or insane?

Objected to by the attorney general, on the ground that the witness has neither heard all the testimony, nor testified of such an examination as laid the foundation for the expression of his opinion.

The court say the witness may answer.

A. The prisoner, in my opinion, is insane.

Q. Is your mind fully satisfied upon that subject?

A. As to the fact of insanity, it is.

Q. How long have you been acquainted with the prisoner?

Objected to by the attorney general, and objection overruled.

A. I first saw the prisoner when I was up here at the trial of Wyatt.

Q. On what is your opinion founded?

A. On his appearance.

Q. Have you heard most of the evidence?

A. I heard most of the physicians, and a part of Mrs. Godfrey's testimony. I have some indistinct recollection of Green's testimony. I also heard the witnesses Hopkins, Smith, Worden, Paine, Austin, De Puy, Gray, Perry and Sally Freeman testify. I heard no testimony on Monday or Tuesday. Heard most of the testimony yesterday.

Q. Does the testimony you have heard corroborate or strengthen that opinion?

Objected to, and the court say that witness must not express an opinion from the evidence, he not having heard all of it.

A. My opinion is founded on the appearance of the prisoner. From his appearance I have no doubt of his insanity; that his mind is impaired.

Mr. Van Buren here moved the court to strike out all the testimony of this witness, except that part relating to his personal appearance. After argument on both sides, the motion was granted.

Cross Examination. I have not only examined the prisoner with care, but have watched his movements, and the expression of his countenance.

Q. What is there in his countenance that indicates insanity?

A. The whole expression of his face is indicative of idiotism, dullness of understanding, or want of comprehension.

Q. What part of his face?

A. The whole of it.

Q. Is there any single or particular feature that you should say indicated insanity?

A. The movement of the muscles indicate it, and, also, his idiotic laugh—both show a want of perfect understanding.

Q. Is there any thing else that you consider remarkable in his countenance?

A. There are some striking features.

Q. Please to name them?

A. His countenance manifests perfect indifference as to what is going on.

The court say the witness must confine himself to the personal appearance of the prisoner.

Q. Is there any thing else?

A. His deportment indicates it.

Q. Any thing else in his countenance?

A. Yes; the contortions of it.

Q. Any thing else?

A. Why, I think of nothing now. I am circumscribed within very narrow limits in my testimony, being confined to personal appearances alone. If I could speak of other symptoms I could answer more fully and satisfactorily. He has a peculiarity of posture in sitting and standing.

Q. What is the peculiarity of his sitting that indicates insanity?

A. The inclination of his body forward, and maintaining that position most of the time.

Q. What is there peculiar in his standing?

A. That of standing with his body inclined forward, with his head downward, and with his arms not hanging easily and naturally by his sides, as is usual in those perfectly sane.

Q. Have you any cases of insanity in your mind where similar indications exist?

A. The same position I have often observed in patients in the Lunatic Asylum, at Utica.

Q. What other peculiarity do you see in his appearance?

A. I have already mentioned that his whole manner was indicative of unsoundness of mind.

Q. What have you seen about the personal appearance of the prisoner in court, besides what you have stated, that indicates insanity?

A. I don't know as I can state any thing further.

Q. What kind of insanity does the external appearance of the prisoner indicate?

A. It indicates an unsound condition of some of the intellectual powers. There is no manifestation of the moral feelings that I have been able to discover.

Q. What other deficiency to you observe?

A. There is no manifestation of understanding, or that he fully comprehends his present condition.

Q. Which of his intellectual powers does his appearance show him to be deficient in?

A. I have not been able to discover a perfect development of any of his intellectual faculties.

Q. Which have you discovered particularly?

A. He is deficient in understanding and reflection.

Q. How do you determine that?

A. From his not appearing to understand what is going on around him, and particularly on this trial. I see no evidence of his possessing the power of reflection, or of reasoning upon consequences.

Q. What is the ordinary evidence of reason and reflection, if the subject keeps still?

A. If I should see an individual, as I have seen the prisoner, for several days, sitting in court where his life is involved, manifesting no emotion, but a perfect indifference; in that I should see evidence of a want of perfect understanding and of feeling.

Q. From looking at the prisoner in court, what kind of insanity do you think he has?

A. He comes nearer dementia than any other form.

Q. What do you mean by dementia?

A. I mean by that term the mental condition of a man who has had the exercise of all the powers of his mind, but that they have become impaired, in consequence of which some of his intellectual faculties or his feelings have become deranged.

Q. Do you recollect of any other case of dementia?

A. I have seen several.

Q. May not the prisoner have some other kind of insanity?

A. I should be inclined to think he had that instead of any other.

Q. What are the symptoms of dementia?

A. Feebleness of understanding, unsoundness of judgment, and an impairment or derangement of the moral feelings. The symptoms vary in different cases.

Q. Are there any other symptoms?

A. There are, doubtless, other symptoms; a demented person may be under a delusion.

Q. Is drooling a symptom?

A. I don't know as running at the mouth is, necessarily, a symptom of dementia.

Q. Is forgetfulness a symptom?

A. It may be in some, and not in others.

Q. Is it not generally a symptom?

A. I have known demented persons to recollect some things very well.

Q. Is it not an ordinary symptom?

A. I think it is not an ordinary symptom.

Q. Is it a frequent symptom?

A. It is not a sure symptom.

Q. But is it not a frequent symptom of that form of insanity?

A. I think not; but it is a symptom I have sometimes seen.

Q. Then it is not a sure symptom?

A. I have met with it often in cases of dementia. I mean partial forgetfulness. Perfect forgetfulness is a rare case.

Q. Is incoherence an ordinary symptom of dementia?

A. Upon all subjects it is not. Upon some it undoubtedly is. If you mean by it an inability to go on with a train of well connected facts, I can say it occurs as a symptom.

Q. What do you mean by incoherence?

A. I mean a wandering from one subject to another.

Q. Then is it not an ordinary symptom?

A. To a certain degree it is a symptom of dementia. In most cases it probably occurs.

Q. Is dementia most common in old or young people?

A. As a general rule it is most common in old people. It depends upon circumstances, however.

Q. What is the difference between dementia and idiocy?

A. By natural idiocy I understand an innate or fundamental defect in the understanding from birth. By dementia I mean that form of insanity which occurs in a person who had been once sane in mind.

Q. Well, what would you call idiocy in opposition to that?

A. In natural idiocy the person never had a perfect understanding. In dementia there is more understanding—the intellect, however, is not defaced, as in idiocy.

Q. Has not the idiot some understanding?

A. He may understand when he is hungry. He has memory, and might understand his own name. His five external senses you will find as good as Lord Bacon's, perhaps. But the countenance indicates no intelligence.

Q. What is the difference in the countenance between a natural idiot and a demented person?

A. In demented persons there may be some indications of intelligence. It depends upon the degree. There is a shade of difference between their smile and that of the idiot. In the idiot there is a manifestation of the want of understanding.

Q. Well, what is the smile?

A. The smile is idiotic.

Q. Then is there not a resemblance?

A. There is a good deal of resemblance in the smile of a demented and an idiotic person, and yet there is a shade of difference.

Q. What is that shade of difference?

A. It would be in the expression and in the design.

Q. Well, can you not describe that difference?

A. The principal difference, perhaps, would be in the design. The idiot would laugh out without knowing what he was laughing at.

Q. Would it not be difficult for you to say whether he knew what he was laughing at?

A. It would, sir.

Q. What is the difference in the movements of the prisoner from that of a natural idiot?

A. I have seen but little of his movements.

Q. In that little what difference do you discover.

A. I can't say there is any; yet his mode of standing is not such as people generally of sound minds adopt.

Q. Is there any difference in his position? (The prisoner is directed to stand up in his place.)

A. There might be no difference in his standing, now, than if he were an idiot. He inclines forward, with eyes downward, and he remains a long time fixed in one position. I have seen idiots do the same.

Q. Is that position indicative of idiocy?

A. Idiots very often assume that position. It is with idiots and demented persons as with sane persons: they vary their positions.

Q. Well, is there not a difference in the contour of the insane as well as of sane people?

A. There is. I never saw two perfectly alike.

Q. What induces you to think this man a demented instead of an idiotic person?

A. I am induced to think a natural idiot would not have sat here as quietly as this man has, and behaved himself with as much propriety.

Q. Do you think he has behaved himself with propriety?

A. I have not seen any impropriety; by which I mean that he has been quiet—made no noise nor disturbance.

Q. Is his posture, when sitting, different from that of an idiot?

A. I suppose a natural idiot would not have sat so quietly in court as this man has, for so many days.

Q. What do you think an idiot would have done?

A. He would have made a noise, I think, and created some disturbance. I do not know what else he might have done.

Q. Suppose him to be utterly reckless of the consequences of this trial, then is there any thing in his attitude that is remarkable?

A. I can hardly conceive a sane man to be in that condition. I have never known a case of the kind.

Q. Can you not conceive of such a being?

A. Not a being that I should call a man.

Q. Have you not seen a man bereft of all moral sense?

A. Not perfectly bereft of all moral sense, unless this man be one.

Q. Suppose him hard of hearing?

A. Although he might not hear he would manifest some desire to know what was going on.

Q. If a man were so deaf as not to know what was going on, would it be remarkable if he were inattentive?

A. It would be remarkable that he remained in that position without endeavoring to know what was going on.

Q. Does he not stoop forward as if giving attention and trying to hear?

A. I said that I had noticed his stooping forward.

Q. Is there any thing singular in that?

A. Nothing singular in his stooping forward, but I think it singular that he remains so long in that position, and holds his arms as he does.

Q. If you should be told that both of his arms were wounded, would that make any difference in your opinion?

A. It would; yet he would not then hold them as he does. It would depend somewhat as to where they were wounded.

Q. Have you examined him in court to see where he is wounded?

A. I have out, but not in court.

Q. You have spoken of his smile. Do you know that he smiles without a cause?

A. I don't know that he smiles without any cause. I have said that his smile was indicative of unsoundness of mind.

Q. Can you not give the reason?

A. I can. If he possessed a perfect understanding of the relation he sustains here, and had a perfect moral sense, he would not smile as he does.

Q. Suppose he had a perfect understanding, would he then be a sane man?

A. I suppose perfect sanity requires the healthful exercise of all the faculties.

Q. Suppose he had the possession of all his faculties, and saw a court and jury engaged six days in trying him, and very eminent counsel engaged in endeavoring to prove him to be insane, would it be remarkable that he should smile?

A. I think it would be, that he should smile as much as he does.

Re-Examination.—On the morning of the second day of July, to which the court had been adjourned, the witness was interrogated by the counsel for the prisoner, as follows:

Q. Suppose you had found the prisoner unable to read, and yet believing that he could, would you regard that fact as bearing upon the question of his sanity?

A. I should regard it as one indication of insanity.

Q. Suppose that when he pretended to read he was told he could not read, but insisted that he did read, how would that bear upon the question?

A. I should regard that, also, as indicative of unsoundness.

Q. Suppose he knew his letters and thought he could read, and when shown the word "Thompson" he called it "Cook," and when shown the word "admirable" he called it "woman?"

A. I should regard that, also, as evidence of insanity.

Q. Suppose a man at the age of twenty-two, brought up in this country, who can count twenty-eight, and then passes to the mention of other numbers, irregularly?

A. I should regard that, also, as evidence of unsoundness.

Q. Suppose he should be asked how much twice three was, and he answered "sixty-four?"

A. In the same light; as one proof of an insane mind.

Q. Suppose him to have committed the butchery of four persons, and when asked why he did it, he should answer, "I had my work to do?"

A. That would be evidence of the same character.

Q. If asked why he did not begin at another house, he answered, "I did not think it time to begin yet?"

A. The same.

Q. If he said he had been unjustly sent to prison for five years, and he knew the persons whom he had slain had no connection with the affair?

A. I should regard that as evidence of delusion; a misjudging; the assumption of false facts.

Q. Is delusion a symptom of insanity?

A. It is a prominent trait of an insane mind.

Q. Suppose a person in childhood to have been smart, playful, lively and active, and to have possessed his hearing; to have been at sixteen confined in a State Prison five years, to come out dull, stupid and ignorant; to speak generally only in answer to questions, and then only by yes or no, or in the simplest form; unable to take up a narrative and relate it without being prompted by leading questions, what would it indicate?

A. I should regard it as evidence of insanity.

Q. Suppose a person who had been sent to the State Prison five years ago, should go to the party upon whose evidence he had been convicted, and thereupon being asked what he wanted, should say he did not know; should eat there, and afterwards kill four other persons?

A I should regard that, also, as evidence of unsoundness.

Q. Suppose a person who had slaughtered four persons who had not in any way injured him, should answer, in respect to the deed, that he thought he was doing right?

A. That would be an evidence of unsoundness.

Q. Suppose such a person to be in jail for such an act, and when asked

what he expected would become of him, he should answer that he expected to go to heaven because he was good, what would that indicate?

A. It would indicate a delusion.

Q. Suppose a person under indictment for murder should say that he meant to kill all he could?

A. I should regard it in the same view.

Q. Suppose you found such a person on trial for his life, remaining three entire days without making one word of inquiry as to the cause, so deaf he could not hear a word, sound asleep after going out of court?

A. That, also, I should regard as evidence of insanity.

Q. Suppose you found his pulse variable, and ranging from sixty-seven to one hundred and fifteen, what would that indicate?

A. It would be an indication of insanity.

Q. Suppose he had an aunt who had died of insanity, and an uncle living who had been ten years insane, would the knowledge of the fact strengthen your convictions of insanity that were occasioned by his appearance?

A. I should regard it as a corroboration, as insanity is often hereditary.

Q. If he should say his hearing was knocked off and went down his throat, what would you infer from that?

A. I should regard that as evidence of delusion.

Q. If the person having been in prison five years and discharged by expiration of sentence, should, upon breaking his knife, say he was to be taken back five years for that offence, what would that indicate?

A. It would indicate unsoundness of mind.

Q. If he should get up in the night, talk about his wrongs, sing, dance and go through a mummery as if trying to read, what would that indicate?

A. I should regard such actions as evidence of unsoundness.

Q. If he had slaughtered four persons within three miles of this town; should then make flight on horses to a place where he was well known; then desist from further flight; offer to sell his horse, and be entirely unconcerned about being taken, what bearing would that have on the question?

A. I should regard that as evidence of unsoundness.

Q. Suppose that when arrested and charged with the crime of murder by the officers, he quietly proceeded to finish his supper?

A. That would at least be very unnatural.

Q. If he had received a severe wound on his wrist by which a tendon had been cut off, and were chained with a heavy iron on his ankles that pressed very unequally, and yet made no complaint of it, what would such a condition indicate?

A. If would be very unnatural, and would indicate unsoundness.

Q. Suppose he lived a mile from his sister's house, and should frequently run there with great violence; when there he should speak to no person; but after staying a minute or two, turn and run back to the place whence he started, what would such freaks indicate?

A. They would indicate aberrations of mind.

Q. If he killed, for revenge, a family in no wise connected with the cause of his injury, would that circumstance have any influence on the question?

A. It would. I should think it very unnatural, and that it was an evidence of unsoundness. [Witness was further examined by Mr. Seward and cross examined by Mr. Van Buren at great length, on the subject of insanity, his theory concerning it and the grounds of his opinion of the prisoner's mind, but the remainder of his testimony was in substance the same as upon the traverse. See trial.]

Dr. Charles B. Coventry, sworn for the prisoner, testified as follows: I am a physician, and reside at Utica. Am the professor of medical jurisprudence at Geneva College. I visited the prisoner in the jail, yesterday, when Dr. Bigelow was there. I made such an examination of him as, together with that made in my presence by Dr. Bigelow, satisfied me that his mind was impaired.

Q. In your opinion is the prisoner sane or insane?

A. It is my opinion that he is insane.

Cross Examination.—Dr. Bigelow has testified to much that took place at the examination of the prisoner. So far as he went in his account of it I think his statement was correct. Dr. B. also asked the prisoner whether a trial was not going on in the court house. He said he did not know. He said he thought he saw some person sworn. Dr. B. asked the prisoner what compensation he would accept for his claim while in the State Prison. He said he didn't know. He was then shown my gold watch by Dr. Bigelow, and asked if he would accept that. He answered No. He was then asked if he would take a thousand dollars. He answered No. He was asked if he stopped at any other house except Van Nest's. He said he did, at the house this side. He was asked why he did not go in. He replied that the door was fast. I recollect of nothing more that was said which was not related by Dr. Bigelow.

Q. Are you aware that it is a very common notion among convicts that they are entitled to pay for their services whilst in prison, particularly if innocent?

A. I was not, before coming here as a witness to attend this trial. Mr. Townsend and Dr. Bigelow have so testified, I believe.

Q. Was there any remark of his that indicated insanity except that about pay?

A. There were several that were indicative of weakness of intellect, but the delusion about pay was the prominent one.

Q. Do you remember any other remark indicating delusion?

A. I do not remember any, unless in connection with the desire for pay.

Q. Was not that examination a very unsatisfactory one to form an opinion from?

A. No, sir, I think not.

Q. How do you define insanity?

A. It is not capable of any short, concise definition that would embrace all species of insanity. Insanity, strictly speaking, is a symptom of a deranged function of the brain, or some portion of it. In all cases there is a defect, either original or the effect of disease.

Q. Which of these defects occurs in the prisoner?

A. Perhaps I shall be better understood if I give you the divisions. Original defects of the brain constitute *idiocy*, and are most frequently accompanied with a malformation of the head. This is one form of insanity. The second form is where the brain is not originally defective, but imperfectly developed. This constitutes *imbecility*. The third form is where the intellect was originally perfect, but where from disease or other cause the functions of the brain are destroyed. This constitutes *dementia*. The fourth form of insanity is *mania*. This is accompanied with an exalted state of the brain. Mania may be divided into general mania, intellectual mania, and moral mania. Intellectual and moral mania may be divided into general mania and partial mania.

Q. Having given the divisions of insanity, under what head do you class the prisoner?

A. His appears to be a mixed case of dementia and partial mania.

Q. Do you think yourself competent to detect dementia without knowing the previous condition of the patient?

A. I cannot speak positively, without knowing his former history, as to whether the case is one of dementia or imbecility.

Q. From your brief examinations would it be safe to infer that the prisoner has dementia and partial mania, without knowing his former mental condition?

A. It would be safe to infer that he has dementia or imbecility.

Q. On what authority do you give your classification of insanity?

A. Guy's Medical Jurisprudence.

Q. In a case of imbecility from an imperfectly developed brain, can you say whether it arises from a neglected education or from disease?

A. I cannot, in all cases.

Q. Is incoherence a common symptom of dementia?

A. It cannot be said to be a common, but it is a frequent attendant of dementia.

Q. Is a defective memory a common symptom?

A. It is a frequent, but not a common one.

Q. Is an apparent inability to give attention to a subject a common symptom?

A. It is.

Q. Were you aware, at the time you made your examination, that the prisoner was deaf or partially so?

A. I was, sir.

Q. Is dementia most common to the young or old?

A. It is most common in old persons.

Q. Is drooling a common symptom of dementia?

A. It is not. It sometimes happens, however.

Q. Have you read the tragedy of Lear?

A. I have, but not recently.

Q. What kind of insanity was his?

A. I should think he had general mania, and, at the time I read it, it struck me as a good description.

Q. Are you able to say how long Freeman has been afflicted with dementia?

A. I have no data for determining that, yet I think it has become permanent.

Q. Can you give any other symptom of dementia than what you have mentioned?

A. His inability to carry on a regular conversation is a symptom.

Q. May not that arise from other causes than insanity?

A. Not to the extent that it exists in the prisoner.

Q. Suppose his powers of speech were defective, might he not have the same difficulty?

A. No, sir.

Q. Suppose he were dumb?

A. If he were dumb and possessed ordinary faculties, the difficulty would not be so great as it is with him now.

Q. Suppose him to be desirous of concealing from you his real condition?

A. It is not possible, with his willingness to answer, for him to practice concealment successfully.

Q. But suppose him to be unwilling?

A. It is not possible, from the manner he gave his answers, that he was unwilling.

Q. But if he were unwilling would not a similar effect be produced?

A. I think not. If he were unwilling to give a narration of events, but had the ability to do so, the same appearance could not be exhibited.

Q. Is he not reluctant to answer. Have you not testified that he did not converse freely?

A. When isolated questions were put he answered readily, which would not be the case if there was an attempt at concealment.

Q. How differently would he act if he were unwilling to answer?

A. There would be a hesitancy before he answered if he were unwilling to answer. He answers such questions as he comprehends, whether for or against him.

Q. What else was there in his appearance that indicated dementia?

A. His general appearance led me to suspect it.

Q. Is it a frequent attendant of dementia that the patient talks to himself?

A. I should think it was rather common.

Q. Doctor, please to state to the jury what there is in the prisoner's appearance from which you judge he has dementia?

A. His want of attention to what is going on around him; the manner in which he sits there now, and as he bends over, and the whole expression of his face, denote it.

Q. What part of it?

A. The whole of it.

Q. But is there not some feature in particular that you can mention?

A. I cannot specify any particular feature or expression that indicates it, but an observing man, familiar with insanity, may discover it in the expression of all the features of his face.

Q. If not familiar with dementia, could he, in your opinion, detect it?

A. Not as readily, nor could he form so accurate an opinion.

Q. Should you think a man, not a physician, could detect this disease in the prisoner?

A. If familiar with dementia he could; if not, he would be less likely to recognize it.

RE-EXAMINATION.—I have been in the profession twenty years. For many years I have made the subject of insanity my study. I am one of the managers of the Lunatic Asylum at Utica, and have been since its organization.

Q. Have you any doubt that the prisoner is insane?

A. I cannot say that I have. I have not seen any thing to raise a doubt of it in my mind.

Q. Is there any thing in the designing and contriving with secrecy a homicide, inconsistent with insanity?

A. There is not.

Q. Do insane persons often design and plan homicides with deliberation, and execute such plan?

A. They do, frequently, when they are laboring under a delusion.

Q. Suppose the prisoner to have planned the homicide of four persons, prepared the instruments for that purpose, and escaped?

A. That of itself would not form any basis for an opinion as to sanity or insanity, except in connection with the causes of the homicide.

Q. Suppose the homicide to have been of persons who had not offended him, and the motives those which this prisoner has expressed in his examinations?

A. The homicide in that case would be the legitimate consequence of the delusion under which he labored, and in that view, it would be evidence of insanity. [This witness further testified in substance as upon the traverse. See trial.]

Dr. Amariah Brigham, re-called for the prisoner, testified as follows:

Q. Will you state your opinion and the grounds of it, as to the sanity of the prisoner?

A. When I was on the stand before, I stated what my opportunities had been of seeing the prisoner. I then withheld any opinion in the case, for the reason that I had not then heard, but desired to hear, all the testimony concerning him before expressing one. I have now heard, I suppose, all the testimony in the case, and am called upon to give my opinion derived from both my observation of the prisoner, and the testimony concerning him. In answer to the question, I would say that it is my opinion that the prisoner at the bar is insane.

In arriving at this conclusion, the first point to be settled is, whether he is feigning insanity. I am of the opinion that he is not, nor have I heard any witness express an opinion that he is feigning it. There is some little difficulty in the case from the want of facts concerning his history, and also on account of his color. In a white person, I think one who has lived for years with insane people, can, from the countenance, detect insanity, although the person might be sitting entirely still, and yet I might not be able to tell in what the evidence consisted.

I see a deranged man there, (pointing to one Daniel Smith, an insane person, who was sitting in the court room at the time.) I saw him across the court room the other day, and knew from his looks that he was insane. (Here the attorney general interrupted the witness, and called up before the jury the insane person referred to. The witness then continued:) I observed, that I could distinguish a white person whom I had never seen before, as being insane, and yet not be able to describe the indications by which I detected it. It is a difficulty to be encountered, in this case, that the prisoner is a colored man. I cannot, and I presume others cannot, judge of insanity from the countenances of colored men as well as from those of white men. There is, oftentimes, a peculiar pallor about insane persons that is indicative of insanity, and yet it cannot be described. The only testimony in this case touching this feature, is that the prisoner is paler than he formerly was. In regard to the history of this man, although there have been a great many facts presented, there seems to be but few from which to judge of his whole life. He seems never to have had a home. Not even his parent is able to throw much light on the history of his mind. Very little was known of him whilst he was in prison. By the rules, no conversation was held with him that indicated much concerning his mental condition whilst there; and but little was known of him after he came out, except that he was seen about the streets and sometimes employed to perform small jobs of work. We are left to judge, in his case, therefore, from a small number of facts; yet these have carried conviction to my mind that he is deranged.

In the case before us, there have been in operation the most common and exciting causes of this disease. The prisoner was predisposed to it by his

parentage. He has had an aunt and now has an uncle insane. These, to me, are very important facts; not because all who have insane ancestors will become insane, but because they are liable to become so from causes which would not operate on others not so predisposed to it. It is estimated that about one half of the insane have, or have had, insane ancestors, or have had insanity in their families; and it is exceedingly apt to spread in families in which it has once appeared.

The prisoner seems to have been an active youth, with perhaps not quite as good an intellect as the majority of colored persons of his age, yet passionate, obstinate, and I suppose somewhat ugly. He seems to have been left to the indulgence of his passions, without education, or mental, moral or religious culture. This I regard as one of the predisposing causes of insanity. The indulgence of the passions soon forms a character that can brook no control, subjects them to violent emotions, and thus lays the foundation of insanity in the passions and affections. It is in this light that the neglect of moral culture is regarded as one of the most predisposing causes of derangement.

At a very early age he was confined in the State Prison, where he had various troubles, and was thought by some to be a singular being, and, as some expressed it, a brute. He was disobedient, and for his disobedience was punished severely. He got into a violent passion for very trivial causes; was apparently ready to kill a fellow convict for moving his shoes, and acted in the manner I have been accustomed to see crazy people act. In the prison he seems to have become deaf. Deafness, however, is not of itself a symptom of insanity, yet it is often a concomitant, and their combination forms incurable insanity. When combined, I have never known a patient to recover. The reason, probably, is that the same cause which destroys the hearing, or affects the auditory nerve, extends also to the brain itself.

He then came out of prison, and so far as I could gather from all the testimony, he was changed. He was a lively, active, sociable lad when he entered the prison, but was taciturn, dull and stupid when he came out, and as his mother expressed it, "he wasn't the same boy; he acted as if he didn't know any thing." This I regard as a characteristic of insanity. So common is this change of character in insanity, that many regard it as necessary to the definition of the term. A prolonged change of character, without any evident external cause, is given, in many works on insanity, as a characteristic; and the cases are almost innumerable where such changes have come within my own observation. A mother loses her child, or a man meets with a reverse of fortune, or has something which has created great anxiety of mind; and soon after, it is perceived that his character is changed; not but that he knows people as well as before, and talks with them; not but that he has memory; but he has become sad, gloomy and unsociable, and without that interest in things which he formerly had. This state often exists for weeks and months unperceived, unless by intimate friends, until

some delusion, or other evidence of insanity, is observable, or some outbreak occurs. Then all notice what had been generally unobserved before—that a change had taken place, and that the person was insane. In this way insanity very commonly commences. The change of character and of the moral qualities often precedes any perceptible derangement of the intellect. In the case at the bar I think this change of character has been proved.

I have observed, that we knew but very little of him whilst he was in the State Prison. Some of the witnesses, however, noticed the change. Dr. Hermance, in conversing with him, thought him deranged. Then he had disturbed nights; often was up in the night, and was noisy. Than that, I know of no better evidence of insanity. So confident am I that sleeplessness is a characteristic of insanity, that I have spoken of it in a published article on insanity as one of its most indubitable symptoms; and that article, I notice, has been extensively copied and quoted. I can attest its truth from my own experience and observation of the insane. It is true, that in some cases insane persons sleep well, but, in general, the insane have paroxysms and are apt to get up nights. I cannot account for the conduct of the prisoner, in this respect, on any other supposition than that it was the consequence of disease, of which I have testified.

His going to a magistrate for a warrant, without any definite notion for whom; declaring that he would have one, after he had been told that it could not be issued; his tender of twenty-five cents; his getting into a passion in the office of the magistrate; his inability to give any connected account of the injury of which he complained, and for which he wanted the process,—all indicate an unnatural, if not irrational, condition of mind. We next come to the act itself, for which he has been arrested and indicted. It was a dreadful tragedy, and yet, as bloody as it was, and as deplorable as it may be, I cannot but regard it as the result of insanity. I cannot believe that a sane man, in the full exercise of his intellect and moral feelings, could do such an act, unless the provocation was very great, or the motive very powerful and strong. Similar cases have occurred in lunatic asylums, but I am not aware that history records any case of the kind happening elsewhere. Quite recently, a man killed two patients at the Baltimore Hospital, and was endeavoring to massacre the whole of them. He was so well as to be about, when the sudden paroxysms came on him. And the manner of his doing it; the shedding of so much blood; the killing more than could have been necessary for any supposable purpose, and the celerity with which it was done, all were regarded as evidence of insanity. I have always observed that the insane act much quicker than the sane. They will tear their clothes into inch pieces, destroy their beds, and break their bedsteads in a period of time so short, that one could not suppose it possible for them to have done it.

In the case of Griffith, in Chenango county, for killing, the witnesses expressed their astonishment at the quickness with which the deed was done.

Here, in the case at the bar, the prisoner must have entered the house, went into different rooms, had some scuffles, killed four persons, looked into various windows, stolen a horse, and rode it half a mile before Williamson had walked that distance. It seems as if he had planned and designed it, made preparation for its accomplishment, indicating the possession of mind that some think incompatible with insanity. Every day's observation, however, convinces me that it ought not to be so regarded. The insane are as adroit in planning and scheming to get away, or in accomplishing their purpose, as the sane. The case of Hadfield, for shooting the King, is in point. He had made a full and careful preparation, had obtained his pistols, and deliberately went to the theatre expressly to shoot the King. So with a patient at the Asylum at Utica, who had killed her father, and intended to kill her mother. She prepared every thing beforehand. I might refer to many other cases, but the mention of these will illustrate my idea.

That the prisoner undertook to escape, seems to many to be inconsistent with insanity. Yet, when I see patients every day doing wrong and adroitly contriving to conceal it; when I know that they have done the act; when I know numerous cases where such insane persons try to escape after having committed heinous offences, I do not think it ought to be so regarded.

A man by the name of Thomas Sanderson, from Chautauque, now in the Asylum, known by many to be insane, was left with a young man threshing in a barn. Whilst there, he killed the young man, by stabbing him more than one hundred times with a pitchfork. He then took up the boards and buried him under the floor, then took a horse and fled, but was overtaken by an officer, and after a struggle, in which the officer was wounded, he was arrested. He is now in my charge, at the Lunatic Asylum. Since he has been there, he has attempted to cut the throat of a patient. He eats by himself. We dare not trust him where there are any instruments with which he can do any injury to others. Rabello, in the State Prison of Connecticut, whose case has been published, is another instance. He killed a boy, and then ran off. These cases show, that, in the attempt to escape, there is nothing incompatible with insanity.

Since the arrest of the prisoner at the bar, there have been various attempts made to ascertain whether he is insane. To many, the fact that he remembers, that he gives a rational account of many things, and repeats them several times, carries the conviction that he is sane. That appears to be evidence to some that he has reason enough left to control his actions. But to my mind that does not carry such a conviction. Living, as I do, with those who exhibit as much intellect as any person in this assembly; whom I daily employ to write letters, to paint portraits, to play on musical instruments, to compose and deliver orations, which would do credit to men of learning and general intelligence; and when I know these people are as deranged on certain subjects as any person ever was, the fact that the pri-

soner remembers and repeats, does not carry conviction to my mind that he is sane. But the prisoner does not either remember or repeat well. He is dull, and stupid, and ignorant, and has but little intellect of any kind. And I think every one must have been struck with the fact, that all who have examined him have found it necessary to come down to simple questions in their examinations; to putting questions which we would not think of putting to a man we considered sane. Such questions as "will you settle for this watch," as put by Dr. Bigelow, and by others who have testified on this trial. Such questions seem to indicate, that the persons interrogating the prisoner considered him a mere child in intellect.

I agree with Dr. Spencer, that his pulse furnishes no evidence one way or the other. Whilst many insane persons have a very rapid pulse, that of others is too slow for ordinary health. The rapid changes, however, from sixty-seven to one hundred and twenty, betoken something not exactly healthy. It indicates that nervous irritability alluded to by the doctor, which we see among the insane. It is not itself insanity; yet nervous irritability is akin to it, as a disease of the nervous system is insanity. The prisoner never asks a question, except for food, for tobacco, or about his wound. He has not asked for or about his mother, nor about any other person. Unless I suppose him bereft, by disease, of all those feelings, hopes and fears which every one in a natural state possesses, I know not how to explain this. It is, however, so characteristic of cases of this kind, that it adds to my conviction of his insanity. Kline, who killed a woman in New York, and was sent to the Asylum above two years ago, always answers readily, but never asks a question on any subject whatever.

The prisoner seems entirely indifferent to his fate, and yet has strong animal appetites—he asks for tobacco, yet apparently cares nothing for his trial. His total indifference I cannot account for on any other supposition than that it is the consequence of his disease. His counting and reading is another circumstance worthy of notice; not, however, because he cannot count or read, but for the reason that when he counts beyond twenty-eight he appears just as confident that he is counting right above that number as below it. The same thing has been noticed of his reading; and the surprise is that he does not know that he cannot read. A child may do this; but when it gets older, although it may practice it, it knows it is not reading. The prisoner's insensibility to pain has been mentioned by the medical gentleman who dressed his wounded arm. On dressing it, Dr. Fosgate has observed that he exhibited no feeling—that he seemed to pay no attention to it. Although many insane persons are sensible to pain, others are not. We put setons into their neck, and perform other operations upon them, and they perform them on themselves. When the wounds are being dressed they show no suffering. I had a female patient at the Asylum who would not eat. We fed her with a stomach tube. To resist us she sewed up her mouth

strongly. I cut the stitches out, but when doing it she exhibited no more feeling than if I had been at work on a piece of leather. And yet the lips, in health, are very sensitive to pain.

The external appearance of the prisoner in his cell, and as he sits at the bar, carries the same conviction to my mind that it does to the minds of Doctors McCall and Coventry. His total indifference—his abject and demented appearance, and his peculiar laugh, which all must have seen, although no one could imitate it, which comes on when nothing is going on that he appears to notice, are indicative of mental disease. In the jail, when inquired of about the offence which he had committed, he laughed; and when I asked him if he was not ashamed of himself, he laughed again. In court I have observed it when there was nothing to excite it, so far as I could discover, and yet I have observed him very attentively. Some have thought it not a little strange that he should smile under the circumstances in which he is now placed, and yet they do not recognize it as an indication of a diseased mind. Now, when I see this every day, in demented persons at the Lunatic Asylum, and particularly on the Sabbath, when clergymen are preaching to us, I conclude that it results from disease. I know nothing in physiology or pathology that accounts for it, and yet I am in the habit of seeing it, although I have never heard it explained.

Such is a hasty review of the case, and although I have not alluded to many things that have gone to strengthen my convictions of his insanity, I have mentioned enough to indicate the reasons which influence my opinion. On the evidence given here, concerning him, before his commission of the offence for which he is indicted, I have no hesitation in pronouncing him insane, and on such evidence should have admitted him to the Asylum as a patient. [The witness further continued at considerable length, in substance the same as he testified upon the traverse, and, after concluding, was cross examined by Mr. Van Buren, on which he testified as follows:]

Cross Examination. On my direct examination I observed that there were certain indications and features of insanity in crazy people that I perceived, yet was unable to describe to a jury. I stated that as a matter of opinion. When I saw Smith in the court room the other day, I had no previous information that he was insane, nor did he perform any act, whatever, that was indicative of mental disease; yet when I discovered him sitting there I thought him deranged, but could not describe to this jury the expression of his countenance that convinced me that he was so. I think I first saw him four or five days ago, and about that time I took occasion to speak to him. Upon asking his name he informed me that it was Smith. After I first saw him, and before I spoke to him, I think I asked some one if he was not crazy. I think it was Mr. Day that I inquired of; it may have been some other one, but, whoever it was, answered me that he was insane. I was, however, as confident before as I was after I asked the question, that he was crazy. Upon inquiry, I obtained a partial history of him before I

went up to speak with him. I was informed that he had been confined in the State Prison, and that he came out insane.

Q. Was not Smith pointed out to you as a crazy man during the trial of Wyatt?

A. I have no recollection of it.

Q. Do you know Mr. Cannon, the constable?

A. I have seen him about this court.

Q. Did he not point him out to you?

A. I have no recollection of it, and think it cannot be true that he did.

Q. Do you know Dr. Dickinson, of this place?

A. I do not.

Q. Did not he or Mr. Holmes point him out to you during Wyatt's trial?

A. They did not. Several persons, however, have spoken to me about him.

Q. May you not be mistaken about that?

A. I may be; yet I think I saw him this week for the first time.

Q. You say persons have spoken to you about him. Did they not point him out to you?

A. I have recollection that persons spoke to me about him, and that I went and talked to him, but I had seen him before.

Q. Was it at all difficult to detect his insanity?

A. It was not, in that person.

Q. Then why did you mention his case in that connection on your direct examination?

A. I was mentioning the difficulty of detecting insanity in colored people, because I had not seen so many that were insane.

Q. But Smith is not a colored man?

A. Certainly not. But I meant to convey the idea that if he had been I might not have so easily detected his insanity.

Q. Why cannot an external appearance in a black man be discovered?

A. They may be discovered; but the emotions and feelings are not so easily discovered as in white people.

Q. Would there have been any different expression in the eye of Smith had he been a black man?

A. I do not know as there would.

Q. Is not the eye, of all others, the feature which is most indicative of the condition and operation of the mind?

A. I think not. The muscles of the face indicate most.

Q. Is that a feature?

A. They move the features and portray the emotions.

Q. Can you name any other feature by which you perceived that Smith was insane?

A. I cannot. It was his whole countenance.

Q. Can you name any feature that denotes insanity more than the eye?

A. Yes; the muscles of his face, as I before stated.

Q. But you say they move the features. I inquire whether you can name any one feature that denotes it more than the eye?

A. No one feature distinguishes insanity. It is the play of them that gives the expression.

Q. What constitutes the features?

A. The muscles of the face. They cause the expression and show the operation of the mind.

Q. Has not the nose an expression?

A. Neither the nose or ears are expressive of insanity.

Q. Can you safely answer that no other feature denotes insanity?

A. Nothing but the play or repose of the muscles of the face.

Q. Does any one of them denote insanity?

A. I do not know that any one of them does; but the cheeks, the eyelids, the whole countenance does.

Q. When you speak of the whole countenance do you include the cheeks and eyelids?

A. I should, as forming a part of it.

Q. Do you think of any other features besides the cheeks and eyelids?

A. Yes; the play of the muscles which gives expression to the mouth.

Q. Can the mouth alone indicate insanity?

A. I think it cannot, alone.

Q. You stated that you had not full and satisfactory information concerning the history of the prisoner: do you think it the duty of the people or the prisoner to prove that?

A. I had no idea about it, and did not know that that was a question for me to decide.

Q. Do you think that sufficient facts have been shown by the people to show him sane, or not sufficient by the prisoner's counsel to show him insane?

A. I did not mean that there were not enough to show him insane; but if more had been shown we should have more evidence of his insanity; that it was singular so little had been learned of his history.

Q. So far as you are aware of your own feelings, have you been actuated by a desire to find him sane or insane?

A. At first I had no desire nor feeling, except that which I suppose every one had, that such an outrage should be punished. But my first interview with the prisoner satisfied me that he was insane, and I could not but have a desire that he might be acquitted on that ground; still, I have endeavored to keep that feeling in entire subjection.

Q. In hearing the evidence in this case, do you think you have paid the same attention to evidence showing sanity as you have to that showing insanity?

A. I think I have.

Q. And given the same weight to it?

A. I could not say that; as the evidence given of mind and memory did not have as much weight with me as some of the other testimony. I was surprised that more evidence of mind was not given. I think I have given the same weight to the evidence that should go to establish sanity as I have to that which should go to establish insanity. I have endeavored, in my testimony, to take a common sense view of the case.

Q. You told the jury in a way that might have confused them, that you discovered a paleness about this man?

A. No; I adverted to such a statement by other witnesses.

Q. Did you not say that his paleness was indicative of his insanity?

A. I stated that pallor in certain cases was indicative of insanity. I thought the testimony in respect to the paleness of this prisoner was entitled to but little weight.

Q. Did you not convey the idea that it was an invariable symptom?

A. I did not mean to say that it was an invariable symptom, but that it was usual.

Q. Did you not say that it was a striking characteristic, or convey a similar idea?

A. I did not mean to say that it was striking, but that in many cases there exists an unusual and peculiar pallor about insane persons.

Q. Then you attach no great importance to that symptom in the case at the bar?

A. I do mean to attach some importance to the fact that this person is paler than before he went to prison.

Q. If the jury should think it natural for him to become paler in jail, would you attach any consequence to that?

A. My judgment is that negroes do not become paler in the shade.

Q. Why?

A. Because they are not colored from being in the sun.

Q. Do they differ from the whites in that respect?

A. I mean to say that colored persons do not become white from being shut up in jail.

Q. Have you not noticed changes in the color of black persons?

A. I have often attended upon black people, but never noticed much change of color in them.

Q. Are you not aware that white persons grow darker in a warm climate?

A. I am; that they grow dark under a hot southern sun.

Q. Do you not think that if you wished to refer these phenomena to natural, rather than to unnatural causes, that it might have occurred to you that the prisoner might have grown paler by confinement?

A. It might have occurred to me, but on reflection I should have concluded as I now do.

Q. Is it not difficult to tell whether a negro grows pale or not?

A. I suppose it would if the change was not great.

Q. You stated that deafness affected the auditory nerve, and that deaf crazy men were generally incurable. Do you say that deafness is a symptom of insanity?

A. I stated, in my direct examination, that, of itself, it was not.

Q. Is there any thing in deafness itself that tends to insanity?

A. They are not always crazy, as the jury know as well as myself; but my impression is that deaf persons are more apt to become so, as there are more deaf persons in the Asylum than out of it, in proportion to the number.

Q. Then do you not think it leads to insanity?

A. No; I don't think it leads to insanity, yet I believe the cause of deafness often produces it.

Q. When do you think this man became deaf?

A. My impression is that he became deaf in prison, although, perhaps, he was a little hard of hearing before.

Q. How do you get the impression that perhaps he was hard of hearing before?

A. I do not know as any one testified to it, but he told me he was a little hard of hearing from childhood.

Q. Is it your impression that the blow with the board in the prison made him deaf?

A. I did suppose that it did, until I heard the evidence on that subject. From the testimony I don't know as I can say what caused it.

Q. Does deafness ordinarily increase with age?

A. My recollection is that in many people it does, but in some cases it does not. I know many crazy people who have been deaf, and yet I have not been able to discover that it increased.

Q. Does it not naturally increase as old age comes on?

A. In old age I think it increases; but I have friends who are and have been deaf for years, and I am not able to perceive that it increases.

Q. What is the general rule?

A. I do not know that in youth or middle age deafness ordinarily increases. In them it is often cured.

Q. What do the books say on the subject?

A. I am not able at this moment to say what books do say on this subject.

Q. Do you believe that the prisoner informed you correctly about having been hard of hearing from childhood?

A. My impression is that he speaks the truth.

Q. Then why do you not believe he got a stone in his ear?

A. Why, a bone may have come out or he may have been hit by a stone.

Q. What would you think he meant?

A. I should think he meant that one of the bones of his ear had come out.

Q. What would have caused such a result?

A. An ulcer might have produced it. He complained of ear ache at one time when in prison.

Q. Suppose that it should appear in testimony that the prisoner was asked last night, "Bill, how did you get on to day," and that in reply he said, "we blew 'em all up to-day," what should you think about that?

A. I should infer that he hardly knew what was going on, and my opinion is that he does not hear much that is going on.

Q. Why do you not believe him when he says the board knocked his hearing off?

A. I do not know but that it may be true; I have no belief on the subject. I am rather of the impression that the blow did not cause his deafness, although he may have thought it did. He may not be mistaken, however, for it may have caused it.

Q. You have stated that one evidence of insanity with you, was that his uncle and aunt were also insane; would you not think it remarkable that no member of his own family were insane?

A. No; because I know of a vast number of instances of the kind.

Q. What is the professional standing of Dr. McCall?

A. He is a highly respectable and intelligent member of the medical profession.

Q. What is his authority on questions of insanity?

A. I should not think any more of his authority than I would of any other respectable member of the profession, except from his opportunities at the Asylum at Utica.

Q. With his opportunities, how do you rank his authority?

A. As highly respectable; yet he cannot have a great knowledge of insanity.

Q. Do you agree with him that insanity is not contagious?

A. Insanity as we see it, is not contagious; but there are instances in which whole communities become deranged, as for instance in the days of witchcraft in New England.

Q. Is hysterics contagious?

A. I have known a person who had hysterics set others into it. As a general rule, however, it is not contagious.

Q. Did not this insanity you speak of in New England affect the legislature?

A. Not that I recollect of.

Q. What were the symptoms of that insanity?

A. I am not able to recollect all the incidents of the times, yet I think those persons were affected, to a certain degree, with insanity.

Q. Do you recollect what was done for it?

A. Laws were passed against it, and witches were hung.

Q. Were witches hung?

A. Those who were said to be bewitched were.

Q. And do you term that insanity?

A. They were in a state of great excitement, in which common sense did not prevail; they were under a delusion.

Q. What is a delusion?

A. It is mistaking fancies for realities, that the person cannot be reasoned out of.

Q. When a number of people are so deluded as to pass laws to hang witches, should you suppose them under a delusion?

A. Certainly not, as the word is defined; I should rather say they passed the laws through ignorance.

Q. Then the legislature was not under a delusion?

A. Not under an insane delusion, for they were reasoned out of it.

Q. Do you think the prisoner was under a delusion when he committed the murders?

A. I presume at times he could be convinced that Van Nest had nothing to do with his imprisonment; but it would return. The delusion was that certain persons had imprisoned him wrongfully, and by killing them he could get his pay.

Q. Does the case show whether he was imprisoned in the State Prison rightfully or wrongfully?

A. My impression is, that the testimony in this case is conflicting about it, and, therefore, I have not formed an opinion on that subject.

Q. If he were imprisoned wrongfully, then he was under no delusion as to that, was he?

A. No; not in that respect.

Q. Was he under any delusion about being imprisoned wrongfully?

A. I do not, of course, know as to that.

Q. If killing people was pay or satisfaction to him, was he under any delusion as to that?

A. I should think he was.

Q. What kind of delusion?

A. That the persons whom he killed were, when they were not, connected with the transaction.

Q. Suppose the killing of people whom he knew were not connected with the transaction was satisfaction to him, was he then under any delusion?

A. Most certainly he was.

Q. What was the delusion then?

A. I can hardly make it plainer to you than my previous answers render it. If I labored under a delusion that a person had wronged me, and I killed him for it, it would nevertheless be a delusion, although the killing might satisfy me. The very essence of the delusion in this case was that he labored under the impression that Van Nest's family were connected with the affair of his conviction, when his reason and all the facts told him that

they were not the people. His delusion told him they were, and he acted accordingly.

Q. Do you agree with Dr. McCall that insanity is an epidemic?

A. I have no other illustration of it than in the case of witchcraft; we have history for it.

Q. Is there any particular season of the year when this epidemic is most prevalent?

A. I have no knowledge that it is more so at one season than at another.

Q. Do you recollect your testimony about the change in this man?

A. The greater part of it I do.

Q. Do you recollect of saying that there was a total change in him?

A. I do not; nor have I said so. I have not intended to say that there was a total change, for that is too strong a term. I mean to say there appears to have been a great change of character and of mental condition; that before he went to prison he was a lively, sociable young man, and of the intelligence of ordinary colored persons, and having the same feelings and affections; and that when he came out, he was found to be changed to an unsocial person, and, as his mother testified, "he was not the same boy; he did not seem to know any thing."

Q. In your opinion, when did this change happen?

A. I think he experienced it in the State Prison.

Q. Was it, in your opinion, gradual or sudden?

A. I cannot say from the testimony; but I suppose it was rather gradual.

Q. How do you get that impression?

A. It is, perhaps, rather a matter of inference than otherwise.

Q. From what do you get that inference?

A. From the testimony.

Q. Whose?

A. From the testimony of several of the witnesses who have testified respecting him. I cannot recal their names.

Q. Did you hear Nathaniel Lynch, (the man with whom the prisoner lived when a boy, and who whipped him,) testify?

A. I think I did.

Q. Did he swear that there was no change in him?

A. I cannot say, positively, whether he did not. I think some of the witnesses did so testify.

Q. Did you not hear Aaron Demun, Thomas F. Munroe and Israel C. Wood testify that there was no change in him?

A. I cannot distinguish persons, yet I recollect that several witnessess did so state.

Q. When all those witnesses swear there is no change in him, how do you find that there is?

A. They did not swear from an amount of personal knowledge sufficient to satisfy me.

Q. Do you infer a change without proof?

A. I do not infer any thing. I think the balance of the testimony establishes it.

Q. Do not the laws of nature govern you at all, in this matter?

A. Yes; so far as they apply.

Q. Then don't you infer that he has grown up as he naturally would?

A. No; because there is some proof that he is changed.

Q. Where is the evidence of any change?

A. The testimony of those in whose families he lived. His mother's testimony produced quite an impression on my mind that a change had taken place.

Q. Why do you give her testimony more weight than those other witnesses who say he is not deranged?

A. His mother must have known him more intimately than any other person, from having brought him up, and having the ordinary knowledge that a mother has of her children. Although she was not constantly with him, she saw him occasionally, and had him with her in his early years.

Q. Do not you recollect that she testified that for several years before he went to prison she saw but little of him?

A. I do recollect that she said that just before he went to prison she did not see him very often; yet she saw him occasionally. I think she would have noticed the change had there been any.

Q. Is not your opinion mainly based on the testimony of the mother of the prisoner?

A. Not mainly; yet I think her opportunities of judging of him better than those of any other witness.

Q. Do you not rely more on her testimony than upon any other witness?

A. I do, perhaps, as much.

Q. I desire an answer. Do you not more?

A. I can hardly say that; yet perhaps I do, for I certainly consider it entitled to considerable weight. I rely very much, however, on Mr. Warden's testimony.

Q. Do you know that colored people acquire but very little information after they are six or eight years old?

A. I do not.

Q. Do you recollect that the witness Lynch, with whom the prisoner lived when a lad, testified that there was no change in him?

A. I heard his testimony. It appears that he did not observe any change.

Q. Then why do you not conclude that Lynch's account of him is the correct one?

A. Why, a change may have occurred without his noticing it. Warden testified that he noticed it at the time; and when a witness swears that he saw a change, I regard his testimony as stronger proof of the fact than the testimony of one who did not.

Q. But is not that an appearance that may be as well observed by one as another; by one who says there is no change, as by one who says there is?

A. I believe those who swear there is no change, swear to what they believe to be true, although I believe they were mistaken.

Q. What enabled Warden to see what Lynch could not?

A. An answer to such a question would be difficult. I have just stated that I believed those who testified that no change had taken place, testified to what they believed to be true; yet I think they were not as observing as those who did perceive, or were mistaken.

Q. What change do you believe Warden saw?

A. I think it was a change of character.

Q. What other witnesses testified of any change?

A. I do not remember their names. I only generalized facts, and those, with my observations, convinces me there was a change.

Q. Do you recollect that Dr. Hermance did not notice any change?

A. I recollect that he did not in the first conversation he had with the prisoner, but at the second he thought him deranged.

Q. How did he testify?

A. I cannot recal his words.

Q. Did you rely on the testimony of John De Puy?

A. Not very much.

Q. Upon Deborah De Puy's?

A. But little.

Q. Upon Adam Gray's?

A. Why, all together their testimony made a considerable impression on my mind. I have, to be sure, some doubts about the testimony of John De-Puy, as I have noticed some testimony in conflict with his.

Q. Did he not testify as well as the rest of the colored witnesses?

A. Not as carefully, I thought. There was a little quibbling in his testimony that threw a doubt on his story, unless confirmed by others.

Q. Did not most of his testimony stand alone, and was he not contradicted by witnesses whom you credit?

A. Most of it was confirmed by others; yet, when he testified to things that he was not very likely to know, it raised some doubt.

Q. Do you not lay stress on his testimony about the prisoner's getting up nights?

A. I do lay stress, very considerable stress, on the disturbed sleep.

Q. Then do you not rely on his testimony?

A. On his and Adam Gray's. I don't recollect that he slept any where else.

Q. But why do you rely upon testimony about which you have doubts?

A. Although I had doubts about some parts of De Puy's testimony, I think I may believe that the prisoner did get up nights.

Q. Are you aware that the evidence shows that the prisoner did not sleep at De Puy's for a month before the murders?

A. I do not recollect of any such testimony.

Q. Do you recollect of De Puy's saying that he was crazy when in prison?

A. I do not.

Q. Do you recollect that witnesses have sworn that there was nothing remarkable about his sleeping?

A. I recollect that the jailer swore that he did not know of his complaining in the night but once.

Q. That was since his arrest for the murder, was it not?

A. I conclude so from his testimony.

Q. In ascertaining present insanity, would it be better to rely on his acts for a month back, or his acts six months ago?

A. I should consider them all. I think his acts six months ago should be taken into the account in determining his disease.

Q. You say that sleeplessness is evidence of insanity. Do you not think the fact of his sleeping well immediately after the commission of the murders and during this trial, is evidence of his sanity?

A. I do not. He may have had a paroxysm, accomplished his object, and yet now be quiet.

Q. You believe the witnesses, then, who testify that he has slept well and been quiet in the jail?

A. Certainly I do. I suppose I am to believe testimony that is not contradicted or discredited.

Q. But you had some doubt about De Puy?

A. I have believed all the witnesses but the one referred to, when a doubt came over my mind as I have stated.

Q. Do these sleepless nights that precede a murder, occur immediately, or for a long time before?

A. I do not know.

Q. Do you not know that they immediately precede the paroxysm in which the murder is committed?

A. No, I do not; because such acts have occurred where no sleepless nights have been noticed.

Q. But when they do occur, what is the ordinary time, before the act, that they occur?

A. I am unable to mention any ordinary rule about them. They may precede the act six weeks or six months.

Q. Did you attach any importance to the prisoner's application to the justice for a warrant?

A. The fact itself was strange, and the manner of it more so. I think the whole testimony on that subject shows that he acted wholly different from what any rational man would, on such business, and on such an occasion.

Q. Would it have altered your opinion any if he had called for a subpœna instead of a summons?

A. I do not know that it would.

Q. Are you aware of the difference between a summons and subpœna yourself?

A. I am not aware of the distinction, if there is any.

Q. Suppose the justice should come into this court and swear that the prisoner was sane when he applied for a summons, would you put your opinion against his oath?

A. I think I would not. My impression on that point is, that it did not occur to the justice that he was insane.

Q. So far as the circumstances of the prisoner's escape have any bearing either way, do they not rather prove that he was sane than insane?

A. Not necessarily. I have known crazy people to escape from the Asylum and go to lawyers for process for me.

Q. Are you familiar with Shakespeare's character of Shylock?

A. I have read what he says of him.

Q. Do you believe Shylock was crazy?

A. I find other explanations for the conduct of Shylock.

Q. What was there in the murder itself, except the celerity of its execution, that satisfied you that the prisoner was insane?

A. Why, the whole transaction; the killing of so many persons under the circumstances.

Q. If, as he might have had, plunder for his object, was there any thing strange in his killing all, if he killed one of the inmates of the house?

A. If his object had been plunder, I see no reason in that for killing an infant.

Q. But suppose he designed to burn the house?

A. The great amount of blood shed, seems to indicate insanity rather than arson.

Q. I understand you to attach importance to the celerity of the act. Would not a sane murderer execute such a work with all possible despatch?

A. Some murderers may proceed with celerity or tardiness. They vary. The recent murder at the city of Troy was not speedy, but gradual.

Q. Have you ever heard of a murder committed with deadly weapons, instead of poison, where it was not done with celerity?

A. No case at present occurs to me where the time could be proved as in this case. In most cases the act itself is not seen.

Q. Do you think the prisoner's celerity in running away from the scene of his murders was any thing remarkable?

A. In his running away I cannot say as I have perceived any thing indicating sanity or insanity.

Q. Did he not flee with celerity?

A. It does not strike me that there was any thing very unusual in his flight.

Q. Does not the celerity of his getting thirty miles in fourteen hours strike you as being speedy, under the circumstances?

A. I do not think it was very fast travelling on horseback.

Q. Well, Doctor, is there any thing which sane men do that an insane man may not do?

A. Perhaps I may say that there is nothing that a sane man can do which some insane men will not do; yet insanity is not to be judged of by isolated facts.

Q. Then may the not running away be evidence of insanity?

A. It might be in some cases. In some cases insane men do not flee.

Q. What is the proportion of the cases where crazy homicides flee?

A. Since the trial of Wyatt, I have endeavored to recal the cases on this subject, and I find the number nearly equal.

Q. If there be a sufficient motive proved for a homicide, is that any evidence of insanity?

A. I do not suppose the absence of motive is itself sufficient evidence of insanity. It is evidence, however, to be taken into consideration with other facts in the case.

Q. Is not a desire for revenge a motive that would indicate sanity rather than insanity?

A. Revenge may operate in certain cases as a sufficient motive for murder, but it depends upon the degree of it that exists.

Q. What was the proof in Rabello's case. He, I believe, killed the boy for treading on his toes?

A. In Rabello's case it was proved by a great many learned physicians, as well as others acquainted with him, that he was not insane, and by others that he was.

Q. Did he indicate any desire for revenge?

A. He only used the expression about skinning eels once, to my recollection. I think he was standing by the table where they were skinning eels at the time.

Q. Were you a witness in the case of Griffith?

A. I was.

Q. Did you testify that he was insane?

A. I did, and he was acquitted by direction of the judge. The court stopped the proceedings.

Q. You mentioned the case of Hadfield. Is he still alive?

A. I believe he is.

Q. Have you not felt a desire that the prisoner's counsel should succeed in preventing a trial on the indictment?

A. Believing the prisoner to be insane, I cannot think him a fit subject to be tried for murder.

Q. Whose books are these in the hands of the prisoner's counsel?

A. I think a considerable number of them belong to me.

Q. You furnished them, then, that they might assist the prisoner?

A. I sent them to Governor Seward at his request, as I would to any other counsel who should desire it.

Q. You referred to the case of Kleim. How do you know that he never asked any questions?

A. I had him with me two years, and he never asked any of me; and I asked his keepers and they told me he never asked them any, so that he never asked any questions to my knowledge?

Q. Is not the asking of many questions peculiar to a certain class—to the Yankees, as they are called?

A. I think not peculiar to the Yankees, although it has been so stated. I however think it a slander. The English, as a general rule, ask more questions than we do.

Q. How is it with the Turks?

A. I have no acquaintance with them.

Q. How is it with the North American Indians?

A. I am under the impression that they talk among themselves, yet perhaps not as much as other nations.

Q. May not his Indian maternity explain his taciturnity?

A. I do not attach much importance to the fact that the prisoner is part Indian, because the testimony shows him to have been sociable. Colored people are generally sociable.

Q. Do you know that Freeman never asked questions since the time when it is said this change came over him?

A. I am speaking of him more particularly since he came under my observation.

Q. Then you think he may have asked questions?

A. Of course I do not believe he never asked questions, but that generally he did not.

Q. You have spoken of his smile. When a man smiles how can you tell what he smiles at?

A. I cannot tell with certainty, yet when the juryman, now smiling, smiles, I presume he can tell why, and yet the prisoner cannot.

Q. How do you know that the prisoner's smile is without a prompting motive?

A. I am not omnipotent, and, therefore, do not know.

Q. Do you not suppose he has thoughts?

A. I dare say he has many queer thoughts.

Q. Suppose he thought there was a good joke going on here, would it not be natural for him to smile?

A. If he understood a joke he naturally would.

Q. Suppose he should happen to think of hooking eggs sixteen years ago, might he not smile?

A. Yes, he might, but I regard his constant smiling as indicating insanity, rather than a recollection of hooking eggs.

Q. Suppose he thought he was blowing us all up in this trial, would he not smile?

A. If he knew what was meant by such a remark he might.

Q. Would not a sane man smile if he thought so?

A. Why, if a sane man thought so, he might, yet I think a sane man situated as Freeman is, would not be very apt to say so, nor to smile at it.

Q. I understand you to adhere to the opinion that an ordinary medical man cannot judge of insanity?

A. I do not go to that length, exactly. I think as I have said, that they are not as competent as those who have made insanity their study, although they may be more competent, perhaps, to judge of other diseases.

Q. What do you think of Dr. Bigelow's capacity and opportunity for judging of insanity?

Objected to and overruled.

Q. What should you say of the capacity of a doctor for judging of insanity, who, like Dr. Bigelow, has been in practice twenty-six years, and seven years physician and surgeon to the State Prison?

A. I should believe that opportunity would render him more competent, if I did not have reason to suppose that he has not been consulted in the early stages of insanity.

Q. But is not such an opportunity a good one for detecting insanity?

A. I do not think the opportunity great. As he does not see the patients constantly, my impression is that Dr. Bigelow's opportunities are not the best for judging of the disease.

Q. But he has charge of the hospital and free access to all the convicts daily.

A. But he goes to the prison periodically. He does not reside with his patients.

Q. Suppose him to be an experienced, discerning man, as he is?

A. I should think him a good physician, and a very judicious man; but I do not think him much of a judge of insanity. He told me that he was not called to cases, generally, in the prison, until he had been told that a man was crazy.

Q. But in such cases where he is called to decide the question does it not furnish experience for detecting insanity?

A. I think experience in detecting feigned insanity would enable him to judge better.

Q. Suppose a man to be called upon only to see those who are not crazy, but who pretend to be so?

A. I should think that would give him some experience.

Q. Of all the men in the Lunatic Asylum, how many do you see, until they are brought there crazy?

A. But few of the cases; yet I am often consulted by letter before they come.

Q. Where moral insanity exists, is the intellect also diseased?

A. My opinion is, that there is always some disturbance of the intellect, where the passions are diseased, although it may be slight. There are others, however, who think otherwise.

Q. Have you not seen cases where no derangement of the intellect was discoverable?

A. I think there was a case, from the western part of this State, in which I did not detect it, although I had him six months with me; but I think it was from lack of time.

Q. Even although the prisoner's passions may be diseased and deranged, do you know that his intellect is?

A. I am confident that it is. He is partially demented.

Q. What kind of insanity is this delusion about pay that you speak of?

A. It may be monomania so far as that alone is concerned, yet I think dementia is the leading trait of his disease.

Q. The one may exist without the other, I suppose?

A. Yes; monomania may exist without dementia.

Q. What is the line of demarcation between the two?

A. It cannot well be defined.

Q. But does not dementia take place after some preceding form of insanity?

A. Dementia is a stage of insanity. Sometimes it is instantaneous, depending upon a great many circumstances.

Q. Have you many cases of dementia in the Asylum?

A. We don't see much of it there; we endeavor to cure them.

Q. How soon after insanity commences before the patient arrives at the stage called dementia?

A. There is no rule as to the length of time before a man becomes demented.

Q. How soon after you think Freeman became deranged do you think he became demented?

A. I cannot say.

Q. When do you think the delusion came on?

A. I am not able to say, further than from the testimony. I think he was under a delusion when he came out of prison.

Q. Do you think stealing hens any evidence of insanity?

A. It may or may not be. If you (Mr. V. B.) should rob a hen roost to-night, I should think you were crazy.

Q. And the same of the other counsel, I suppose?

A. Yes; for it would be equally strong.

Q. Is not malice a motive for mischief and crime?

A. I think it is.

Q. May not a sane man act from that motive?

A. I can readily conceive of a sane man acting from a bad heart.

Q. Suppose a man should steal and wind up with a murder, would not malice be the most natural inference?

A. Upon those facts only, I should infer nothing about the question of sanity or insanity.

Q. Suppose a man should fire a gun into a crowd of people, and kill several people, and you were informed that he had previously said he intended to do so, on these facts alone, what would you infer in respect to his sanity?

A. If you (Mr. V. B.) should do that act, I should think you insane.

Q. Suppose I should saw off the posts of a rail road bridge so as to endanger the lives of passengers who crossed it, would you infer malice or insanity?

A. I should think you deranged.

Q. Do you believe in Dr. Haslem's theory, that all men are unsound?

A. I do not. I have seen men who had sound minds.

[Witness further continued in substance as upon the traverse. See trial.]

The prisoner's counsel then rested.

JAMES CANNON was then called and sworn for the people, and testified as follows: I am a constable, and attended this court as such during the trial of Henry Wyatt. During the time of the trial of Wyatt, Daniel Smith was in court. He sat on the west side of the house, near the wood box. Dr. Brigham came across to that part of the house, as he was walking about the room. He walked considerable during that trial. As he came up to me I said to him, "there is an insane man," pointing to Smith. He turned his head, looked at Smith, nodded his head and walked off. He did not look at him a great while. I think it was before Dr. B. was sworn on that trial.

CROSS EXAMINATION.—Q. When was the Doctor sworn on Wyatt's trial?

A. I can't recollect the day.

Q. At about what time?

A. Near the last of the trial.

Q. When was the last of the trial?

A. Well, last Friday or Saturday a week ago.

Q. Did it end then?

A. I think it did.

Q. Were not counsel engaged on Monday and Tuesday in addressing the jury?

A. Don't know but they were, come to think of it.

Q. What did you say to the Doctor?

A. I spoke and said, Doctor, there is an insane man; any one can see he is insane. He turned and looked at him, and nodded his head.

Q. When did you first state this?

A. Yesterday.

Q. To whom?

A. To Thomas F. Munroe.

Q. What makes you think it was before the Doctor was sworn?

A. Because he was walking round, and I supposed he wanted a seat. I offered to give him a seat.

Q. Well, does that define the time?

A. My impression is that it was about that time.

Q. How do you know it was before the Doctor was sworn?

A. Why, I think I compared Smith with the prisoner when I spoke to the Doctor.

Q. Did you hear his evidence?

A. Yes, sir, I heard it.

Q. What was his testimony?

A. It was, I think, in regard to insanity.

Q. Was there any witness on the stand at the time?

A. I cannot answer as to that.

Q. Was one of the counsel speaking?

A. I think not. My impression is that it was before he swore.

Q. Might it not have been this week?

A. I am confident it was not this week.

Q. Who sat on the seat with Smith?

A. No one.

Q. Were there ladies in court at the time?

A. I think there were.

Q. Was the court house full at the time?

A. I can't tell how full it was; about as to-day, I think.

Q. Are you acquainted with Dr. Brigham?

A. That's the only time I ever spoke to him.

Dr. Amariah Brigham, by permission of the court, was recalled to the stand and testified: I have heard, with some surprise, the testimony of the witness Cannon. He may have sworn correctly in respect to the time, but I have a distinct recollection that I saw Smith in the court room before any person pointed him out to me, and that when I saw him I noticed the appearance of insanity.

The people then resumed.

Dr. Thomas Spencer, recalled for the people, testified as follows:

Q. Have you heard all the testimony in this case?

A. I think I have, as I have been in attendance on this trial very constantly.

Q. Have you given careful attention to all the testimony bearing upon the question of his sanity?

A. I have, and taken notes. I have also made an analysis of this case with more care than I have ever bestowed on any medical question.

Q. From all the evidence you have heard, as well as the analysis by you made, what is your present opinion as to the sanity of the prisoner?

A. I entertain the opinion which I have before expressed, that there are none of the essential symptoms of insanity in his case.

Q. Will you give your reasons for that opinion?

A. The question resolves itself into the determination of three things in the investigation:

1st. What are the facts which prove insanity?

2d. What are the facts which prove sanity?

3d. What are the facts that prove the insanity of crime?

These questions are the very nicest in medical science, and require a more careful analysis than any other. When we distinguish between two diseases so as to name the one or the other, and say that it is present in the system, we call that naming of the disease, the diagnosis. To be true, this must be founded on true facts. I therefore will abbreviate and repeat the definition of facts given yesterday. What I mean by fact, is a self-evident proposition, and hence appeals to the common sense of every rational mind.

Facts are truths of matter or of mind.

False facts are untruths of matter or of mind.

Facts of opinion are facts founded in truths of matter or the right reason of mind.

False facts are untruths founded on false facts of matter, or wrong reasons of mind.

Delusion is a term often used as defining insanity.

Delusion is a wrong conclusion drawn from any facts, right or wrong.

False facts or false facts of opinion, by right reason, always lead to false conclusions. False conclusions are called opinions, and should be more properly called delusions, because always such. The sane and the criminally insane have like delusions.

I will, in the first place, confess my own delusion in respect to this case, by way of illustration, and then of some other delusions.

The first opinion which I formed, which is frequently called an opinion or conclusion, was that the prisoner was probably insane. It was, however, a delusion, and was founded upon a description given me of the facts by one of the most respectable citizens of this place, whilst riding upon the railroad. My second delusion in this case was, if he prove insane, that the prisoner was sane. This delusion, if it prove to be one, was when we had partially traversed the issue. This enables me at this time to define two terms found every where in the medical books on insanity. These terms are "illusions" and "hallucinations."

"Illusions" are false impressions produced upon the mind, resembling precisely impressions made upon the external senses, as when we dream we hear noises or see sights. When seen in waking hours, they are part of our day dreams, and the higher degree of day dreaming is a hallucination.

"Hallucinations" are false thoughts taken as realities. In dreaming, hallucinations and illusions are always mistaken for the realities of things. For

example, if we dream that we see a horse, it is an illusion; if we dream we purchase a horse, it is a hallucination. In night dreams, both are taken as realities. In day dreams, we soon correct the error by our other senses, or by the power of reason. Insanity is equivalent to a night dream in this respect; every thing is taken for a reality.

In a strict sense of the word, night dreams are not always delusions, because some minds have performed high acts of reasoning, such as mathematical calculations, and awake to write out the conclusion, and when so written out, such calculations have been found in waking hours to be the truth and not delusive.

From these definitions, it will be perceived that the minds of men can be in all states; of sleep, of healthy wakefulness, of insanity, of sanity, and of criminal insanity. By this enumeration it will also be perceived that the mind may be in every possible condition; and every of these conditions is to be found in the two forms of insanity and the one form of sanity which I have designated and described. The question whether Freeman is insane, must be determined by an approximation resembling the approximation in mathematical calculations, where we can never reach a perfect result. Every thing depends upon comparison, and in determining which symptom occurs most or least in the several forms of mental condition—insanity, sanity, and criminal insanity.

With these facts classified, if we find them describing the case of the particular individual, we may name the case sanity, insanity or criminal insanity, according to the proof derived from the facts. To borrow a figure for illustration: in order to reach a conclusion which shall not prove a delusion, we may liken the process, not to a city set on a hill to guide the night wanderer by its thousand lights, but to a search in the deep, dark forest, guided only by the track of the wild deer or the path of the savage, to the rich mine of truth that lies in its darkest recesses. To such rules of reasoning have I confined myself in this most responsible investigation.

In order to ascertain the physical diseases of the body, it is necessary to understand its structure thoroughly, by dissection, as a point of comparison, in order to understand its diseased condition, because each organ has some symptom, peculiar to itself when diseased. It may be called the language of symptoms. So the mind needs dissection, or to be understood in its several faculties, as so many points of comparison, to determine its diseased condition. I propose a very brief reference to the several faculties of the mind as points of comparison.

The faculties of mind may be divided into three classes, all conspiring as one whole, to govern human action; and may be called "involuntary," "partly involuntary," and "voluntary" faculties of mind. These terms are comparative, and mean, least voluntary, intermediate, and the most voluntary operations of mind.

When the "involuntary" operations of mind are the seat of disease, so as

to render an individual unconscious of what he does, he is irresponsible for his actions. This is "insanity" in its highest degree. In the other two forms of mind, sanity and criminal insanity, conscience still holds its control over the mental operations. This is therefore the balance wheel, between the voluntary and involuntary operations of mind, always whispering to the sane and criminally insane, right, or wrong, before every action. This then is the division line, between right or wrong, in human action; the one is voluntary and the other involuntary. The sane act under the direction of the understanding, in subordination to the force of reason, comparison and judgment, which may be called the moral faculties. These faculties having sat in judgment upon motives, the will is exercised under the whisperings of right or wrong, made by conscience. I will subdivide them.

I hardly need say what I mean by sensation. It means an impression upon the eye, ear, or any other organ of sense, received into the mind. Under this, as the first range of faculties, I have only to enumerate them, to have them understood. The more prominent are, hunger—thirst—love of society—love of children—love of money—love of combat. We have under this category, also, anger—revenge—fear—joy and love, as passions to excite the affections or propensities. These give spring to motives.

I have before spoken of whisperings of conscience, and the balance of understanding, as the guide to will. By "will" I mean the mental faculty, which puts the body or mind in action. Besides conscience, as an intermediate faculty, we have three others, conception, imagination, association. As voluntary operations of the mind, we have attention, perception, memory, understanding, a point I have before reached, with conscience as a guide to human action. By conception, as an intermediate faculty, is meant the springing up of any impression previously made upon the mind through the organs of sense. In sleep, those impressions appear as realities; conception gets up illusions in sleep, and realities in waking hours. It may be called the stark-thought of mind. Imagination, or imaginary thoughts, are excited by the passions of anger, hunger, and joy, and are a succession of thoughts, passing through the mind, without much connection, and naturally involuntary. When asleep, such thoughts appear as realities, and are hallucinations. Thoughts of imagination are incoherent thoughts. If a man were ploughing with his oxen turned towards the plough, it would appear like reality, in sleep.

But now for reality, in a singular though real shape. The description of the Dutchman's horse is an illustration. He lost his horse. Whether he had run away, or was stolen, he couldn't say. He described him thus: "When he stands up to the stable, his head comes first; when the boys plague him mit the pitchfork, his tail comes first." This would be a reality.

I come next to the other intermediate faculty of the mind, called association. This is partly voluntary, and partly involuntary, by which ideas become grouped together in some natural relation. If drawing a horse and

carriage, we should generally place the horse's head first. Of the voluntary operations of the mind, attention is the power of concentrating our thoughts upon our sensations, or objects of thought; it may be considered the ear of mind.

Perception is the apprehension of a thing by the mind. It may be called the eye of the mind. The subject of sensation, or of thought, when received by the memory, is committed to the powers of the understanding, called comparison, reason and judgment.

I have thrown upon paper a rapid analysis of the most prominent symptoms of INSANITY. They are strange sensations mistaken for realities—strange sights and noises—strange thoughts—strange illusions—strange hallucinations—delusions—expressions—incoherent thoughts—unreasonable actions—impulsive actions—steady fury or intermittent fury—steady incoherence or intermittent incoherence of thought—intermittent confusion of thought—continued confusion of thought—violent chaos of thought—simpering chaos of thought—partial destitution of thought, or inability to start a thought. One of these symptoms occur in all cases of insanity. I do not think a case can exist without exhibiting one of these symptoms. Attention, weakened or suspended, is the more common symptom. Comparison difficult—feeling of embarrassment in the head—lies unconsciously—reasons right from imaginary thoughts—reasons wrong from truth—reasons and judges wrong on all things, because conscience has lost its influence. When a person is bereft of reason, he justifies all his acts—while reason remains, or in some forms of insanity, he reasons not at all. Calm action alternates with impulsive action—calmness steadily, such as prisoner has in this case. Truth-tellers become liars unconsciously—disclose and express regret at his impulsive intention to commit acts criminal in the sane. When he has furious mania, he threatens and acts simultaneously; may be conscious or unconscious of what he does. Makes odd expressions. The insane may be steadily grave, or steadily cheerful; he may be exceedingly restive, or quiet as a lamb—carelessly indifferent to acts criminal in the sane; more rarely the insane exhibit extraordinary skill in their plans. The faculty of combination is confused, or may be suspended—builds castles in the air—feels no remorse of conscience—or occasional glimmerings of conscience are displayed on most subjects, or none—and passion rules the muscular actions. I STATE MY OWN BELIEF HERE, THAT NO CASE OF INSANITY EXISTS WHERE THE INDIVIDUAL IS IRRESPONSIBLE, UNLESS THE PASSIONS ARE DISEASED TO SOME EXTENT.

These constitute the prominent symptoms of insanity, mixed up together. There are others of a subordinate character, which are not necessary, as points of comparison. I propose to read the more prominent points of criminal insanity. It comes on slowly—the person is mischievous—cheats a little—swears—lies—steals, then lies again—the symptoms mix up together, and grow worse—he suffers from dreams—restiveness, asleep or awake—sleep-

lessness—starts journeys nights or Sundays—loiters in bar rooms—meets hale companions—has frightful dreams—has night-walkings, or *voluntary somnambulism.* If at a tavern, he sleeps awake, because conscience pricks, or because he tries to turn day into night—feigns calmness, especially when planning crimes—carefully arranges time, generally for the night time—place—instrument, and companions, if any; carefully plans an escape; all things are then ready for crime—arson, theft or death. Those are some of the more prominent symptoms. I would then state here that I have carefully drawn up the very symptoms of insanity and sanity in parallel columns, and recurred to them mentally.

I believe that care required this mode of examination in order to make an opinion conclusive; although in a case not involving life and death, I should have found but little difficulty in coming to a satisfactory conclusion. I kept careful minutes of the testimony, and at each point in the progress, noted down their relations to each of the faculties of mind I have defined, and to the symptoms of sanity and insanity, as they were arranged in my mind. The result at which I arrived was, THAT ALL THE FACULTIES OF MIND WERE POSSESSED, IN A DEGREE, RENDERING FREEMAN A RESPONSIBLE BEING.

The first witness called, Mr. Curtis, testified substantially to Freeman's agitation when he went into the cell. At the time of this agitation he answered, they intended to kill him. Why kill the child? Some feeling was exhibited in the answer, Didn't kill the child; State owed him for five years labor—some body had got to pay him. He believed him more of a knave than a fool, when a boy. Putting all these facts together, he (Curtis) came to the conclusion that he had idiocy or insanity, or a mixture of both. Here we find exhibited in these facts the passion of fear, or as he testifies, feeling. I wouldn't make much of that. Somebody had got to pay him. I infer that love of money, as a means of getting something to eat and drink, was a desire remaining in Freeman. This would imply concealment, or forgetfulness, or errors of recollection on the part of Freeman. The balance would be in favor of sanity from that symptom, because concealment is more common to the sane, than to the insane. He told Mrs. Godfrey he had been in prison five years; did not steal the horse, and wanted a settlement. The same evidence of love of money is obvious then. Any one with common sense will decide whether it is on the side of sanity or insanity. It is answered by the question, "*Which is most provident, the sane or insane?*"

The witness Green thought he had not much intellect. He said he would rather not give an opinion. He was good at blowing; was a half-pay man; he had not much success in teaching him to read. Those facts would imply small intellect.

Mr. Hopkins stated that he got the idea of heaven that it was above. He thought from what he said that the Savior still remained on earth. On the question of who ought to pay, he thought all ought to pay; looked as if ex-

pecting pay. That would seem to imply the love of money. Then whether the one standing by ought to pay? He replied we'll do what is right about it. That would seem to imply a knowledge of right and wrong as a fact. He thought him a monomaniac on the subject of pay for services in the prison. Witness draws inference from these facts that the prisoner labors under a form of monomania, which implies partial mania, partial madness, in opposition to furious madness, the highest form of mania, characterized, in its usual form, by hallucination on some particular subjects. Allow me to make the distinction between them. Hallucinations in our waking hours are soon corrected by the sane. Delusions, on the contrary, which are founded upon false facts, or facts of opinion, are very common to the sane. For instance, if this witness is right, his conclusions should be designated in strictness, an opinion. If wrong, it should receive the name of delusion. The witness or myself must, therefore, labor under a delusion, because one or the other must have made up that opinion upon false facts, or false facts of opinion, or both. Which is right? Truth is always consistent with itself. Freeman cannot be both insane and sane. Here is the advantage of my tiresome definitions.

There are three forms of insanity; *mania*, *monomania*, *dementia*, and some add, *idiocy*. This brings me to a point where I need to tell what monomania is, as a point of comparison in this case with the words or actions of the prisoner. The symptoms of monomania are illusions or errors of the senses—hallucinations or errors of thought, and delusions founded thereon—that is, unusual things or thoughts get up the feeling of reality in the patient, just as much as when illusion or hallucination occurs in dreams. If upon one subject, it is called monomania. In this case I would appeal to the common sense of every one who hears, whether Freeman has had strange sights or heard strange noises, or had unusual thoughts as the foundation of his belief. I have listened to the testimony with great attention, and have found neither of these present, nor any errors of sensation as to the sense of sight or sound; I have not been able to discover a single one; they are among the most common symptoms, and the other symptoms characterizing monomania present. Incoherent connections of thought are the subjects in monomania, that is, if the love of money be the subject, confusion of thought, incoherence and singular action would be developed, when his mind was turned to that subject.

The prisoner had one singular thought on the subject of pay: that "all of them ought to pay," as he had expressed himself. It means the people. That must either be a delusion to which the sane are alike subject, or it must be a hallucination. Which is it, a delusion or hallucination? He always connects with it the stealing a horse. In a low mind, the nice distinction wouldn't be drawn between the people's having imprisoned him rightfully or wrongfully. We should most of us say that was a delusion of the mind of Freeman. A mind like his would readily make him believe he ought to have his pay; a wrong conclusion founded on a right opinion, and grounded on a false

original fact. It, therefore, comes under my definition of a delusion founded on false facts. Mr. Hopkins considered him a monomaniac. A conclusion, therefore, founded upon such a false fact is valueless. In saying that "we'll do what is right," he showed the power of distinguishing between Right and Wrong!! Monomaniacs are generally impulsive when the patient is moved by any thing which usually arouses the passions; all the ideas on that subject become confused and incoherent, and it is no uncommon circumstance for all the powers of the mind to be involved in great confusion for a time, by any exciting cause. In the calmer moments the patient will be only deranged upon the particular subject; at other times on all subjects. Such is the general character of monomania—such its general aspect as a disease, especially when it assumes that exalted state called homicidal monomania. Is it homicidal monomania, or criminal insanity? Here comes a nice distinction, for several have avowed their belief that it was monomania. Are these opinions truths, or are they delusions? The farther symptoms of homicidal monomania, as laid down in the books, are these: First, that the patient acts from the sudden impulse of the moment. On the contrary, a sane criminal generally acts deliberately, arranges the time, place, instruments, accomplices, if they have them; do every thing with deliberation; scarcely an exception can be found to the general fact, that such insane patients as commit homicide, at once confess what they have done. They frequently, by no means generally, and perhaps, half the time, disclose their intentions beforehand. The mother is suddenly taken with an impulse to kill her own child; in her lucid moments, she shudders at the thought; discloses her intention, and asks her friends to prevent so terrible an act. Man, guilty of crime, rarely discloses, except to confidants. The homicidal monomaniac confesses his crime, if it can be called crime. The sane criminal conceals his crime; he confesses his crime as honestly as the insane, when he gets caught, and can't escape punishment. These are the facts of medicine and law, as laid down by writers, and according to my own observation.

Apply these principles to this case and how stands the balance? So far as the facts of Mr. Hopkins go, the circumstances and facts considered altogether, are very much on the side of homicide, resulting from moral depravity. Has conscience lost its influence over his mind? The next witness was Wm. P. Smith. Smith considers him a man of limited ideas. Why go so far to kill? "Stand a better chance to fight"—"sorry I killed the child"—"looks kind o'hard." There is, then, the same ideas with respect to pay; the avowal to fight until he died; about the liver; sent to prison wrongfully, were the leading thoughts. The answers as to child, imply the remains of conscience; that he could stand a better chance to fight, away from a thick population, the evidence of reason. Moral depravity, not insanity, are inferable so far as these facts go.

The opinion that this witness gave, that he could not distingush between right and wrong, being founded on false facts, was a delusion of the witness.

Justice Paine's testimony, of whom he wanted a warrant; State Prison; didn't steal; repeated denial; appeared in a passion; said he was abused; must have satisfaction; threw two shillings at the Justice. My marginal inference was "love of money, revenge," in balancing the account. Here is the passion of anger, strongly developed; a sudden impulse, one of the leading characteristics of mania. The common sense of the jury will determine whether this is the result of revenge, and love of money. The leading facts of Mr. Parsons were, enquired for an Esquire's office. Why? "Wanted to get damages; explained that he was deaf; wanted a warrant for the man who put him in Prison." Whether the mistake between an Esquire and a Justice is not sufficient to account for this, I need not say.

Sally Freeman next: "talking; laughing boy; learned to read in spelling; opinion that he is entirely changed; dull; didn't talk." That shows a great change of character; that is a strong evidence of insanity. She thought him insane. Whether the change from boyhood to manhood, and deafness, would account for the change? In jail, the prisoner wanted counsel; Mr. Bostwick asked him, Had you an accomplice? No. Were you told that Van Nest helped to get you in prison? No. Asked who he wanted for his attorney? "I don't know the lawyers." Wouldn't take pay of Murfey; would have all, or wouldn't take any. Hope of escape, from wanting an attorney, implies a reason, and a good reason.

Mary Ann Newark: says he was a smart, active boy; after prison, requested her to speak louder; proposed to board; woman poor; wouldn't say any thing, only answer questions; would do his work. She accounts for his "acting queer" because he was deaf. To compare the patient with himself as well as with others, is important. The witness was under a delusion, or she thought right. My marginal references are, "he reasoned like others; he was faithful; and taciturn because deaf." But she states one of the strongest symptoms of insanity. The prisoner should have the whole advantage of it, viz: The prisoner appeared to be in a *hurry;* he appeared to act from *impulse.* Just as he was going to start out, he was in a *hurry.* This fact, in medico-legal science, implies insanity. What else is there to balance the account? The person acting in this hurry, asked what he should do? There is deliberation as well as hurry. He stopped to put snow in the tub. My marginal query, is—was it the impulse of insanity, or the hurry of sanity?

It accords with the laws of mind that the impulses of insanity should not thus alternate with deliberation. In drawing my balance, therefore, I should put it on the side of sanity. If he acted from impulse, was it that of mania? Dementia has no impulses, except sudden ones. Time, place, instruments, are generally carefully arranged in the sane. Freeman carefully threw his knife out of the window. The truth of science, therefore, tells me that all these acts, coupled with the facts of the case developed by legal scrutiny, could not have been done but by a sane mind.

Deborah Depuy testified: Does not talk of his own accord; dull; changed from boyhood; deafness. These, as points of comparison, are sufficient to account for them on established principles of physiognomy.

Doctor Hermance said: Reasons for murder same as others; wouldn't pay. He believed prisoner was insane, because there was apparent sincerity when he spoke about pay; dull; ear-dropped. Ear-dropped is a singular expression. In the ordinary sane, when they spoke of pay for being in prison, it would appear as an absurdity; it would seem to be a delusion. In this case, he had argued himself into the belief that he ought to have his pay by a false course of reasoning, connected with his confinement in prison. This opinion of Dr. Hermance should, in my view, be called a false fact of opinion, or a delusion.

Robert Freeman next called: "Heard well when a boy; movements never very quick; slow; same as other boys; playful; often played with him. Changes—head down; don't appear like the same boy." Compare an orphan boy with a man grown, from ten to twenty-one, and with the fact of his present deafness.

John Depuy observed that he was "Smart, lively, active, danced, could throw any boy." He also describes some of the most general symptoms of insanity, "dancing, getting up nights, talking to himself, believing he was in a real fight when there was no one to fight with."

My marginal note is—illusion, hallucination, delusion, revery, (revery is a waking dream.) As illustrating the laws of mind, I would state this fact, that for a moment I had this illusion in my mind—that of seeing the negro dance, or hearing him sing;—the hallucination that it must have been a real dance; and hence an opinion, which should always be based upon true facts, that it was a dance. That opinion was a delusion. This I can but state, was, for a short period, the pleasantest period of the trial on my mind. I didn't stop to reflect. I felt the strong feeling of joy that I had reached certainty in relation to this poor prisoner's insanity. A little reflection satisfied me that this joyous period was delusion. I was looking with anxious solicitude for the symptoms of insanity, if existing. The symptoms as described, (although the symptoms of insanity,) in general are found in other forms of insanity besides those already noted; they are common to mania, but not confined to any of the four forms of insanity described in medical books. They are alike the symptoms of drunkenness, which I have not studied specially as a disease. I thus account for my own temporary false fact of opinion. It was just as good an opinion as any one founded upon false facts. The thought that I had seen drunken men frequently sing and dance and fight, coming up in my mind, corrected the whole delusion. The insane, monomaniac, demented person, or idiot, can make no such correction. At this point, I would state that no medical man on the stand has expressed the opinion that this is mania; or, mania with lucid intervals of incoherent

thought. Upon this point, I will say there can be no doubt that he is free from mania. Furious raving is all the definition I need to give of mania.

Doctor Briggs asked, "Why commit murder?" Bill, like the yankee, asked, "Why did they put me in prison for nothing?" This was a delusion; but was it the delusion of a demented person? Opinion, insanity; after alluding to "eating liver," and perhaps other facts, which I have not abstracted. These reasons for murder were all unsatisfactory to Dr. Briggs' mind. His opinion corresponds with Doctor Van Epps', next called; except Doctor Van Epps expressed the opinion that it was dementia and idiocy combined. This was founded on all the facts he had heard; and the fact that Freeman said, "they said I was crazy in prison." When desperate acts are performed, they glory in telling them; sometimes talk considerable. These were the leading facts of Dr. Van Epps.

True facts and false facts of opinion.—First interview of Rev. John Austin—religious feeling. Second interview, to ascertain what relations Freeman's crime had with Wyatt's trial—eleven answers to questions, all pertinent. Why he killed Van Nest, put repeatedly; no intelligent answer. Why he killed Van Nest when not active in getting him in prison. His being in prison is the sole idea to which his reason referred, to get pay. Had seen Mrs. Godfrey, and tried to get pay; had been wrongfully imprisoned and wanted to get pay; had called on Bostwick and Paine to get pay; Freeman had also called on Bostwick and Paine to see if something could not be done about pay; got no satisfaction from them. Is it right to visit the deeds of one on another? no definite answer; right to kill child? shook his head in token of "No." Why begin at this house? I went along and thought I might begin there; liver; stones in ears; ear dropped; incoherent; Testament given by Mr. Austin. How many would you have killed? A great many if wrist had not been cut. Do you know they hang folks for killing? Yes. What do they do to folks that kill? Hang 'em; if you will let me go this time I will try to do better. This was a strange state of mind.

Marginal inferences—Reason, memory, revenge, or pay. Acted by shake of head, as sane say, No. Then with respect to the thought, I thought I might begin there, and to the liver, I have in a marginal note—Illusion or defect of memory. Deaf persons are liable to illusions of hearing; blind persons imagine they see sights they do not. He must have remembered the words he heard, or the words must have been an illusion. It is probably an expression he has somewhere heard, and called up by association, when committing the murder.

He was asked if he would like to have Gov. Seward defend him? Yes. Didn't first understand until after repeating and varying phraseology; he then answered, yes.

As indicative of the state of the mind of the prisoner, I have in a marginal note—fear; hope; conscience; intention; attention; understanding; memory; comparison; righter or better reason; moral powers, such as all reasonable beings possess.

I have, under the head of "motives"—Had he a motive to get clear? and the answer is, "Yes."

Demented persons could not understand and give so correct answers as those made to Mr. Austin, in one case of a thousand; nor do I believe, from what I know of medical science, they could give such answers at all. Whatever form or degree of dementia, my own opinion became here fixed, still making a voluntary effort to give attention to every point of testimony on the other side of the question; and had I been summoned, as in one case of my past life, to prove the insanity of the prisoner, I should have announced to his counsel that I had no reasonable doubt of it.

Take this with the general fact which was stated upon the affirmative yesterday, that the prisoner was sane, that I did not believe any insane person would fix his attention, and understand or comprehend, and, by the power of memory and association, give answers so exactly correspondent as those I had heard given on the various examinations of the prisoner made by myself and in my hearing, I feel as little doubt on the question of the prisoner's sanity, as I have felt in distinguishing ordinary diseases in my professional practice. The reason is, that I have derived my conclusion from *facts* instead of *false facts*. I have found from *facts*, in this case, the evidence of THE HEALTHY EXERCISE OF EVERY FACULTY OF THE MIND.

Q. In arriving at this conclusion have you taken into consideration all the testimony in this case?

A. I have, and have analyzed it all with great care.

Q. Has the investigation removed all doubt from your mind that the prisoner is perfectly sane?

A. The scrutiny, so far as I can judge, has been impartial on my part, and conducted according to the strictest method of induction which should form the foundation of all medical facts of opinion.

Q. What chair do you at present occupy in the Medical College?

A. That of Professor of the Theory and Practice of Medicine, but have collaterally lectured on Medical Jurisprudence.

Q. Have you given particular attention to the subject of insanity?

A. I have. It has been a subject of engrossing attention with me for several years.

Q. Have you from your examinations and the evidence, proof of the full exercise by the prisoner of each and every faculty of the mind?

A. I have; yet that his morals are blunted as in men of feeble intellect.

Q. How do you determine that the system is diseased?

A. To say that a disease exists, we must find some of the essential as well as the occasional symptoms of a disease.

Q. Are not diseases of the mind manifested in such a way as to be observable?

A. They are manifested through the brain and nervous system. Insanity may be dependent on a disease of the more solid parts of the brain, or a derangement of its functions.

Q. When called as a witness to determine a question of sanity, can you determine it in any way other than by witnessing the operation of every faculty?

A. We commonly determine it by a shorter method. We look to the symptoms of insanity, and if we find most of them present, we take it for granted the person is insane.

Q. Are you from reading or from observation acquainted with the Indian mind?

A. I have some acquaintance with them, and have observed their peculiarities.

Q. Have you studied the Indian character so as to be able to give its leading traits?

A. Many of them, I can. I lived several years near the Oneidas.

Q. What is their character in respect to taciturnity?

Objected to and objection sustained.

Q. What is their character in respect to answering questions briefly yet pertinently?

Objected to and objection sustained.

Q. Have you observed the smile of the prisoner?

A. I have, occasionally.

Q. Can you say whether it is indicative of any peculiar kind of insanity?

A. I cannot draw any conclusion from it that is worth much. It resembles very much the demented smile.

Q. Can you determine from the physiognomy whether a person is insane or not, and if so, the kind of insanity that exists?

A. I cannot. In lecturing, I tell my class that they should visit patients in the day time and at night, so as to see their condition and appearance, but not to place their principal reliance on appearances.

Q. Do negroes tan in the sun?

Objected to and objection sustained.

Q. Do they grow pale by imprisonment?

Objected to and objection sustained.

Q. Doctor, is there any feature more expressive of disease or of passion than the eye?

A. I do not think of any feature that is more so; others might think differently.

Q. Is the eye more expressive of insanity than all others?

A. I cannot answer that.

Q. Is insanity an epidemic disease?

A. I have never considered it particularly so, yet all diseases are liable to become epidemic.

Q. Have you ever known a case where insanity has been epidemic?

A. I never have known an instance where it prevailed as such.

Q. Do you regard the fact that the prisoner cannot read, but thinks he can, as any evidence of insanity?

A. It is one of those irregularities that others might consider as some evidence of insanity, but with me it has but very little weight. Those born blind cannot be taught the character of objects of sight so as to understand pictures as those who see can. They compare them to objects of hearing, tasting, smelling, or feeling, or some of the senses. Ask them what a picture is like, and they will perhaps tell you, the sound of a trumpet. Children, who have not learned to put sentences together, when set to read will get up a mummery in imitation of reading, resembling that of the prisoner. He had poor opportunities for learning, and therefore could not be expected to read, and would imitate in that respect a child.

Q. What do you think of his determination to get pay?

A. I think it a delusion.

Q. Of what character?

A. From all the evidence before me, I consider that it arises from his having associated the idea of having been imprisoned wrongfully with the idea that the laborer is worthy of his hire, and that he tried to get his pay.

Q. But concerning the killing to get pay, how do you think his delusion was in respect to that?

A. It is a common-place remark that every one must have heard among boys, if one makes an assault upon another, "I'll pay you for that." It is equivalent to revenge.

Q. Do you regard an intention to get revenge for a conceived injury as evidence of insanity?

A. I do not. Persons aggrieved or insulted very frequently make use of the expression, "I'll have satisfaction," which means, "I will avenge the wrong."

Q. Upon the subject of dementia do you discover any evidence of it in the prisoner?

A. I have not, except that his powers of mind are below that of ordinary men.

Q. How do you define dementia?

A. Feebleness of intellect and incoherence, define dementia better than any two other words.

Q. Is incoherence an invariably attending symptom of dementia?

A. It is so rarely absent that I cannot, from any thing in my reading or experience, believe that dementia can exist without it. It is the very word by which some define the disease.

Q. Is there not absurdity in the idea that the prisoner is demented?

A. Absurd thoughts and incoherent thoughts mean very different things. Absurd thoughts have come before me in the evidence, but very little of incoherence.

Q. Do the books which are regarded as authority on this subject, mention incoherence as an essential symptom?

A. They do; and it should be regarded as an essential symptom.

Q. Have not all diseases some essential symptom?

A. They have.

Q. Are you confident that there is no incoherence in the prisoner?

A. I have not heard one answer evincing incoherence, where the question was understood and within his comprehension.

Q. What are the other essential symptoms of dementia?

A. Forgetfulness, incomprehension, irrationality and inappetency.

Q. Have you discovered any want of memory in the prisoner?

A. I have found as few instances of failure of memory as I have ever found in any other individual, and yet, in most cases, it is the first symptom.

Q. Have you discovered any want of comprehension in the prisoner?

A. I have not, except that which arises from his deafness.

Q. Have you discovered any other symptom of dementia in the prisoner?

A. Several symptoms have been observed that would, if standing alone, get up the surmise that he was insane, but of them there is not one symptom which is not common to a sane mind.

Q. Did you examine the prisoner with Doctors Doane and Brigham?

A. I did.

Q. What is the standing of Dr. Doane in the medical profession?

A. He is a man of considerable celebrity as a writer and translator.

Cross Examination.—Q. What was Doctor Doane's opinion about the insanity of the accused?

Objected to, and objection sustained.

Q. If the attorney general should go to-night and steal hens, what would be your opinion of his sanity?

A. Not doubting but that it might be a supposeable fact, I would not make up any opinion.

Q. Suppose you were required to make up an opinion?

A. Taking his character as I know it, I should say it would be an evidence of insanity.

Q. Suppose he should arise here and fire a gun into this crowd, what state of mind would it indicate?

A. I should think it a much greater evidence of insanity than to steal hens.

Q. Why so, Doctor?

A. Because he would be much more likely to do the latter. I should put such an act in one side of my balance?

Q. What would you put in the other?

A. I cannot get up the symptoms on the other side. It would be the absence of symptoms of insanity.

Q. If you found him in possession of memory sufficient to answer thirty questions coherently, would that balance the account?

A. No; it would not.

Q. If you found an appetite for chickens, and that he was hungry, would that account for it?

A. Yes; if he was likely to starve.

Q. Doctor, in your opinion which of these portraits has the most expressive features? (Counsel here presents the witness with Rees' Encyclopedia.)

A. In one figure the mouth, in the other the eyes are most expressive.

Q. Then you think there is expression in the mouth?

A. I should think a negro's mouth and lips were as expressive as his eye, but as a general rule the eye is most expressive.

Q. Speaking metaphorically, as you have, has the mind any nose?

A. I have not studied bumpology sufficiently to answer that question.

Q. Speaking metaphorically, as you have in relation to the eye and ear of the mind, has the mind any mouth?

A. I do not know as it has.

Q. Was Paradise Lost written under the excitement of hunger or anger?

A. I never supposed either.

Q. Was the tragedy of Hamlet?

A. I have never supposed so.

Q. Do you consider Paradise Lost a coherent work?

A. I do. It is a work of reason combined with imagination and volition.

Q. How is the tragedy of Hamlet?

A. In that there is an imitation of incoherence. I think it is coherent incoherence.

Q. Was either of them composed under the excitement of joy?

A. They were deliberate, no doubt, although compositions of that character excite the feelings. Poets are, therefore, more frequently found in Lunatic Asylums than mathematicians. All exciting pursuits are more likely to lead to derangement than others.

Q. How do poets compare with mathematicians or reasoning men as to their liability to become insane?

A. They are more prone to insanity.

Q. Do you know of any poet in this country that ever was confined in a mad house?

A. I do not.

Q. What faculty or power of the mind moves the mouth in taking food?

A. Hunger excites the motives, and the will influences the muscles.

Q. What faculty moves the feet in walking?

A. The will.

Q. What faculty moves a horse to open his mouth to take his oats?

A. The will.

Q. What is it that induces a horse to move when driven?

A. His will, or the will of the driver, both combined.

Q. Has the horse the involuntary faculties you have ascribed to men?

A. Some of them; the instructive faculties are as strong as in men. They

possess the faculty of voluntary motion; have a limited understanding—no reason—some comparison—do not know how much.

Q. Have you ever seen an insane horse?

A. I have seen an insane horse, cow, and other animals, when affected with hydrophobia. All the mental faculties of the horse, that do not belong to the human species, may be deranged, but none that belong to the human species exclusively.

Q. Are quakers more liable to insanity than other men?

A. I should think they would be less so.

Q. Do they more often manifest the symptoms of what you call criminal insanity?

A. No; much less.

Q. Do they travel on Sunday more than other people?

A. I don't know, indeed.

Q. Can you refer to a case of insanity that you have seen or read?

A. I have read the case of Abner Rogers.

Q. Was he, in your opinion, insane?

A. I consider his a case of insanity. In his case there was the fullest evidence of it.

Q. Have you any evidence that he could answer questions more coherently than Freeman?

A. I think so, but I don't know.

Q. How were Rabello's powers of memory?

A. I never made it a special point of examination. A great many insane people give correct answers until you happen to hit the vein of insanity.

Q. What is the characteristic of Rabello's case?

A. I cannot say. I cannot remember the names, but mean to remember the facts of cases.

Q. Did the case of Rogers show the case of one insane who was capable of performing much more labor throughout than Freeman?

A. I believe it did.

Q. If the prisoner thought the Van Nest's had something to do with getting him in prison, when he killed them, did he act under a delusion?

A. He probably did.

Q. Was it an insane delusion?

A. No, sir.

Q. Why was it not an insane delusion?

A. Because we have no evidence, in the testimony in the case, that he either believed it or imagined it to be true.

Q. Suppose the prisoner was insane, and knew the Van Nest family had nothing to do with sending him to the State Prison yet slew them for the reason that he believed they had, was he under a delusion?

A. The question is absurd, and I am not bound to answer it. I will re-

call that remark. An insane man cannot believe that which he knows to be false. He mistakes imaginary for real thoughts.

Q. Suppose a man who knew he was not the King of England, but who supposed he was, having the imagination that he was King, to give notice to his Secretary of State that he was, what would you think of that?

A. It involves an absurdity.

Q. Suppose a man believed that he was the Savior, and under that impression committed a crime, would you say that he was insane?

A. I don't recollect to have heard of such an instance.

Q. Would it be an insane delusion?

A. Upon a question of that kind I will not venture an opinion until such a fact transpires.

Q. If a man were to believe himself the Savior of the world, would he then be under a delusion?

A. He would.

Q. Would it be a delusion peculiar to the insane, or belong, according to your classification, to criminal insanity?

A. I should hardly imagine that the criminally insane could get up such a belief. It would be a delusion and would be a strong indication of insanity.

Q. Could a sane man indulge such a delusion?

A. I should think it involved an impossibility. If a man should tell me he thought so, I would'nt believe him.

Q. Have you ever seen an insane man under that delusion?

A. I have.

Q. Can a sane man indulge such a belief?

A. I cannot think he can.

Q. Why?

A. Because it involves the attributes of the Deity, which are above men.

Q. Do you believe that there are women, besides Victoria, who believe they are Queen of England?

A. I do.

Q. Are such women sane?

A. No one perfectly sane can indulge that delusion. One partially sane, if she had the bump of ambition largely developed, might.

Q. Why cannot a perfectly sane woman believe so?

A. Because she cannot believe and disbelieve at the same time.

Q. What is the reason that a sane man, who believes that the Van Nest family had nothing to do with putting him in prison, cannot be under the delusion that they did, and slaughter them for that reason?

A. Because it is impossible for a sane man to believe what he don't know.

Q. If you dream you see a horse is it a hallucination?

A. It is.

Q. If you dream you see a horse is it an illusion?

A. The horse is an image then, and is an illusion when seen in dreaming.

Q. If you dream you buy a horse is that an illusion?

A. It might be both hallucination and illusion. The image and the abstract idea would be a compound of the two. They cannot well be separated.

Q. Is every self-evident proposition a fact?

A. It is considered so.

Q. Are all facts self-evident propositions?

A. Not necessarily so.

Q. Did you state to the jury that by facts you meant self-evident propositions?

A. Not as a general thing.

Q. Can insane men think?

A. Yes, and a great share of the time involuntarily; and that is the very essential fact in those cases.

Q. Can an insane man have attention?

A. He can.

Q. Can he conceive?

A. Yes, and apprehend.

Q. Can an insane man apprehend correctly?

A. He can, in a high degree, on some subjects.

Q. Can an insane man have memory?

A. His memory can never be perfect.

Q. Can his memory be inappreciably impaired?

A. I presume such a case might exist.

Q. Can an insane man have hunger and thirst?

A. Certainly.

Q. May an insane man exhibit anger and revenge?

A. Yes; they perform acts indicating these.

Q. May insane men have understanding enough to comprehend the tendency of their actions?

A. They can, but not where conscience is gone.

Q. May insane men have fear?

A. They may.

Q. Do they exhibit prudence?

A. They often do.

Q. Is there any act of the mind but what is common to both?

A. There can hardly be said to be any.

Q. Do insane men write poetry?

A. They frequently do.

Q. Do they compose orations and essays?

A. They do, and often with ability.

Q. Do they plan escapes?

A. There are such cases on record.

Q. Do they plan murders and execute them?

A. They have murdered their keepers.

Q. Can they compare?

A. They often do, yet that faculty is generally very much impaired.

Q. Can an insane man have method in his madness?

A. Yes, but it is not usual. You cannot find any thing in the sane but what occurs in the insane.

Q. Do the insane often think others so?

A. Man is a bundle of absurdities, and no wonder the insane should consider others insane.

Q. Is an insane man like a sane man sometimes awake and sometimes asleep?

A. The same in that respect, but the characteristic is that insanity is a continued day dream, unless lucid intervals happen.

Q. Have you not likened insanity to night dreams also?

A. I have likened insanity to night dreams—the mistaking imagination for fact.

Q. If a man take false things for true, is that insanity?

A. That is one of the strongest evidences of insanity.

Q. Is there any symptom that is not an invariable symptom?

A. I never would rely upon any one symptom.

Here the testimony closed.

During the examination of the witnesses, numerous questions of interest arose, which were argued and decided, but which have not been noticed here, for the reason that the testimony which was the same as upon the traverse has not been fully reported. It is presumed that they are measurably unimportant to medical men, and as they are clearly indicated in the opinion of Mr. Justice Beardsley, lawyers are referred to that paper for information respecting them. [See opinion of Supreme Court, granting a new trial.]

Mr. J. Van Buren then addressed the jury in behalf of the people, and Mr. W. H. Seward for the prisoner, concluding at a quarter past eleven, P. M., on the 4th day of July, when His Honor, Judge Whiting, charged the jury substantially as follows:

JUDGE WHITING'S CHARGE.

Gentlemen of the Jury:

The prisoner has been indicted by a grand jury of this county for the murder of John G. Van Nest. Upon being brought into court to be arraigned on that indictment, counsel acting in his behalf interposed for him a plea that the prisoner is in a state of insanity. The district attorney denied, ore tenus, the truth of that plea, and thus formed an issue preliminary to any further proceedings upon the indictment.

By the statutes of this State, it is humanely provided that no insane person shall be tried. Insanity is a disease which so far impairs the mental faculties and powers, that, whilst it continues, the victim is not supposed to

be capable of answering to a criminal charge. No insane person can be tried, sentenced to any punishment, or punished for any crime or offence whilst he continues in that state. [2 R. S., 582.]

To try that question in the case of the prisoner, you have been empanelled and sworn, and after the court shall have discharged their duty, you will proceed to determine the fact according to the evidence. The rules of law which the court may suggest for your guidance in this case, may serve to direct you in your investigation. From your patient attention during this protracted trial, I cannot doubt that your minds are duly impressed with the importance of this question, as well to the prisoner as to the people. Human life probably hangs upon the issue.

Although the examinations of witnesses have taken a wide range, and have developed a large portion of the entire history of this prisoner, the only question for you to determine is, whether he is at present insane. If insane for any cause, or upon any subject, he cannot be tried upon the indictment. The evidence of the fact attending the alleged murder, his flight and arrest, as well as his former conviction and imprisonment, has been given, not for the purpose of determining his guilt as upon a traverse of the indictment, but for the purpose of exhibiting the life and conduct of the prisoner as bearing upon the issue of present insanity. In that view you will consider it, leaving the question of whether he was sane or insane on the twelfth day of March, to be settled hereafter, in case you find him sane now.

The law presumes every man sane until the contrary be proved. It is, therefore, a fact to be proved, like any other fact, to the satisfaction of a jury. To establish the fact of the prisoner's insanity, it must be proved that he is laboring under such a defect of reason from disease as not to be able to distinguish right from wrong. If some disease is the acting power within him which he cannot resist; or if he has not sufficient use of his reason to control his passions; if he is dispossessed of the free natural agency of his mind, he is insane, and cannot be tried. Or if his moral and intellectual powers are so deficient that he has not sufficient memory, will, conscience, or controlling power, or if through the overwhelming violence of mental disease his intellectual power has for the time been obliterated, he is not to be placed on trial for his acts. Does the proof in this case bring the prisoner within this rule?

The classification of insanity by learned men has no influence in determining the question. If he be insane, the form of that insanity is not material, for the result must be the same. Ignorance is not insanity. The law does not require any degree of knowledge to render a person responsible, beyond a knowledge of right and wrong. The evidence of the prisoner's insanity is derived from three sources, viz: from comparison, from facts, and from opinions of medical witnesses.

It would be idle to decide upon the soundness of his mind by expecting or looking for knowledge and intelligence in him about matters of which he

had never learned. He must be taken in his own grade of life and intelligence to determine whether in that he has reason, judgment, memory, and consistency of conduct. If compared with other men, those with whom he is compared should be of his own grade, ignorant and uneducated, but yet who have a knowledge of right and wrong, and whose lives and conduct are under the control of conscience and reason, although in a low degree.

From facts in the case. The facts from which the evidence tending to show his insanity is principally derived, are those which relate to his appearance and conduct; to the change in him since his boyhood; to his reading and counting; to his hearing; to the breaking the knife in prison; to his resistance of authority, his punishment and his complaints while there; to his sleeplessness; to his buying the steak; to the family insanity; to his stupidity; to his ignorance and indifference to his fate and the proceedings on this trial; to his habits of silence; to the expression of, and smile on, his countenance; to his want of early education; to his former conviction and imprisonment; to his protestation of innocence; to his claim for pay and its refusal; to the blow which he received with the board; to his conduct after that circumstance; to his persistence in the belief that he should be paid for his time; to the murders because of refusal to pay him; to his larceny of the horses; to his riding into Mrs. Godfrey's yard; to his denial of the larceny to Amos and others; to his denial of the murders; to his being confronted with the dead and with his accusers; to his committal to jail; to his confessions there and the manner of them; to his simplicity; to his memory of events and to his taciturnity of manner and his mode of answering questions. All these have been alleged to bear upon the question of his present insanity. You will consider them, and judge of them as you would of other facts bearing upon the reason of human action. And, gentlemen, you should also inquire whether the prisoner is under a delusion. [The judge here presented them the case of Kleim, tried at the Oyer and Terminer in New York, and explained his case, and submitted to the jury whether the acts of the prisoner were the effect of delusion, or of unsound and erroneous judgment. The judge then continued.] The jury should consider the proof in regard to the prisoner's uniform assertion that his conviction and imprisonment had been wrongful and unjust, because he was innocent of the crime of stealing the horse; his opinion that he ought to be paid for his time in prison; his demand of that pay of Mrs. Godfrey; her refusal of that payment; his application to magistrates for process to compel payment, and their refusal of it; his declaration that the people had taken his time and labor from him; that there was no law for him. Also his preparation of the fatal knife; his conduct on the night of the murder; his concealment of the weapons under the wood; his answer to Doctor Bigelow's question, what he did in the house after hiding his weapons, "nothing, but I stood round there and thought about it. I didn't know what to do, but finally I thought I'd go any how." All these matters are facts relied upon by the counsel acting in behalf of the

prisoner, as tending to prove the prisoner insane. You will consider the testimony on the subject, and give to them the force and importance they deserve.

We now come to the opinions of medical witnesses. The opinions of professional men on a question of this description are competent evidence, and in many cases are entitled to great consideration and respect. This is not peculiar to medical testimony, but is a general rule alike applicable to all cases where the question is one depending on skill and science in any peculiar department. In general it is the opinion of the jury which is to govern, and their opinion is to be formed upon the proof of facts laid before them. But some questions lie beyond the scope of the observation and experience of men in general, but are quite within the observation and experience of those whose peculiar pursuits and profession have brought that class of facts frequently and habitually under their consideration. Upon this ground, gentlemen, the opinions of witnesses who have been conversant with insanity in its various forms, and who have had the care and superintendence of insane persons, are received as competent evidence, even though they have not opportunity to examine the particular patient and observe the symptoms and indications of disease at the time of its supposed existence. It is designed to aid the judgment of the jury in regard to the influence and effect of certain facts which lie out of the observation and experience of persons in general. And such opinions, when they come from men of great experience, and in whose correctness and sobriety of judgment just confidence can be had, are of great weight and deserve the respectful consideration of a jury. But the opinion of a medical man of small experience, or of one who has crude or visionary notions, or who has some favorite theory to support, is entitled to but very little consideration. The value of such testimony will depend mainly upon the experience, fidelity, and impartiality of the witness who gives it.

The opinions of persons not educated to the profession, but who have been so situated as to have given particular attention to this disease, and to patients suffering under it, are also competent evidence, but not to the same extent as those of medical men of the same experience. The evidence derived from all these several sources should be applied to the condition of the prisoner's mind, at the present time, and is received with that view.

A large number of witnesses have been sworn on both sides. Their testimony is voluminous. I cannot believe it necessary to detain you with its reading. Indeed, the day is nearly spent, and the reading of it would carry us into the Sabbath. You will determine this case, not by the number of the witnesses on either side. The amount of their knowledge, their integrity, and every thing that gives weight and value to testimony, should be considered; and if, after carefully weighing the evidence in this light, under the responsibility of your oaths, you arrive at the conclusion that he is insane, you will return such a verdict to the court; if not, then you will find

the prisoner at the bar sane. Take the matter into consideration, and let your verdict be such as God and your consciences shall approve. Be just and fear not.

To this charge the counsel for the prisoner excepted.

The Judge concluded his charge at fifty-five minutes past eleven o'clock P. M. Two constables were sworn to keep them, &c., when his Honor remarked to them that in case they should agree upon a verdict, the court would convene on the next day to receive it.

On Sunday, the fifth day of July, 1846, the court again convened between the hours of eight and nine A. M. The jurors then came into court attended by the said constables, and were inquired of by the clerk whether they had agreed, to which they replied "we have not."

His Honor, the circuit judge, then inquired what the difficulty was among them; whether it was a disagreement as to the evidence, or any thing the court could remove by further advice.

One of the jurors, in reply, stated that it was not a disagreement as to the evidence; that they stood eleven against one in opinion.

MR. DAVIS, one of the jurors, remarked that he was the one dissenting. He did not believe the prisoner was a responsible agent; that although he was proved to have memory and knowledge of events, he had not been proved to have made an induction of reason. He, therefore, could not agree to a verdict of "sanity."

His Honor then remarked to the jury that in his desire to compress his charge on the night before, he had omitted one suggestion upon a point mentioned in his charge, but from the lateness of the hour he had forgotten to speak of it as he had intended. It was the evidence of his guilt as laid in the indictment. The prisoner is not on trial before you on that charge, yet the evidence was deemed proper for the purpose of comparing the knowledge of the prisoner with the knowledge of other persons of the same facts; and if his knowledge of many of these facts corresponds with others known to be sane, then the jury were to say whether the prisoner did not disclose a state of mind sound and sane as to those matters. And so of other events and transactions of his life. If he shows a knowledge and memory coinciding with the knowledge and memory of others known to be sane, the jury are to say whether that is, or is not, evidence of sanity. Insanity is unsoundness of mind; a change of character from soundness to unsoundness. It is alleged that the prisoner has dementia. Instances of this condition of the mind are doubtless familiar to some of you, in cases of extreme old age, where the mind and memory have decayed and lost their power. If the prisoner have that form of insanity, when did it occur, and when did the change take place? The main question for the jury to decide is whether the prisoner knows RIGHT FROM WRONG. If he does, then he is to be considered SANE. I do not believe that there is evidence of delusion, as there is proof that it is common for convicts to claim pay for being confined.

One of the jurors here observed, "such is the opinion of the jury."

He further said it was important that the jury should agree upon a verdict, and it was the duty of the court to keep them together until they agreed. Your verdict is for the information of the court, and hence, the court may confer with you with more freedom than in a case where your verdict would be final as to the guilt or innocence of the accused. The sheriff will provide you with refreshments, which, with a walk in the fresh air after your night's confinement, the court hope will enable you to deliberate further, with a desire to arrive at unanimity.

These remarks were excepted to by the counsel for the prisoner. The judges then retired from the court house until eight o'clock, P. M., of the same day. On taking their seats at that hour, the jurors were called and interrogated by the clerk as to whether they had agreed upon a verdict, when the foreman delivered to the court a verdict in writing, as follows:

"WE FIND THE PRISONER SUFFICIENTLY SANE IN MIND AND MEMORY TO DISTINGUISH BETWEEN RIGHT AND WRONG."

His Honor directed the jury to render their verdict orally, whereupon the foreman declared the same verdict orally to the court, and being polled, each answered that it was his verdict.

The prisoner's counsel, who had just arrived, then requested the court to reject that verdict, and to instruct the jury to find a verdict upon the issue raised by the plea of insanity, i. e., whether the prisoner is "sane or insane."

The court refused, and counsel excepted.

His Honor, the circuit judge, directed the clerk to enter the verdict as rendered, saying that it was equivalent to a verdict of sanity, under the rule laid down in his charge.

Excepted to, and court adjourned to nine o'clock the next morning.

TRAVERSE OF THE INDICTMENT.

THE ARRAIGNMENT AND PLEA.

On the morning of the sixth day of July, 1846, LUMAN SHERWOOD, Esq., district attorney, moved the court that the prisoner be brought in and arraigned upon the indictment for the murder of John G. Van Nest.

MR. SEWARD felt obliged to oppose the motion. A plea of present insanity had been interposed in behalf of the prisoner, upon which an issue had been joined. Until that issue shall have been disposed of, or a verdict of sanity found, he denied either the propriety or the right of the court to require the prisoner to plead.

MR. VAN BUREN replied, that although the jury had not found a verdict of sanity, in form, they had in effect, and the court had so decided.

His Honor, the circuit judge, observed that the court would not hear an argument of that question. It was for the court alone to say whether they were satisfied that the prisoner was sane. The verdict, although not precisely a verdict of sanity in form, was that in substance, and the same had satisfied the court that the prisoner should be tried.

Decision excepted to.

The motion of the district attorney was granted, and the prisoner was brought by the sheriff to the bar.

After reading the indictment, the District Attorney, in a very loud tone of voice, asked the prisoner if he demanded a trial upon the same, to which the prisoner answered "No."

The prisoner was asked if he had counsel, to which he replied "I don't know."

The prisoner was then asked if he was able to employ counsel, to which he answered "No."

His Honor, the circuit judge, then directed the clerk to enter for the prisoner a plea of "NOT GUILTY."

MOTION TO POSTPONE THE TRIAL.

MR. SEWARD moved the court that the trial of the prisoner be put over the term, and in support of his motion read the following affidavit:

CAYUGA OYER AND TERMINER: William Freeman, ads. the People.

Cayuga County, ss: William H. Seward, of Auburn, in the county

of Cayuga, counsellor at law, being duly sworn, saith, that William Freeman, the prisoner at the bar, is a person of a mind so feeble and a knowledge so limited as to be absolutely unable, in the belief of this deponent, to make, with requisite understanding, any deposition or perform any other legal act. That from the most careful personal inspection of the prisoner which this deponent has been able to make, and the best judgment he has been able to form from the testimony upon the preliminary issue in this cause, this deponent believes, without any reservation, that the prisoner at the bar was insane at the time of committing the offences alleged in the indictments, and remains in that condition.

This deponent further says, that it seems to have been judicially established on the preliminary trial in this cause, and this deponent believes, that the natural feeling of indignation excited by the prisoner's inhuman homicides, swelled by other circumstances, rose so high on the arrest of the prisoner, that it was only by the most diligent efforts of the police that he was saved from being the victim of the blind fury of the people. That that popular indignation has by no means so far subsided, in the belief of this deponent, as to leave any ground of hope that at this time a jury of twelve indifferent and unprejudiced persons could be found in this county. That any trial which could now be had, however fairly conducted by the court, would, in the belief of this deponent, be but a hollow form, unless by mere accident some cool, dispassionate persons might find their way into the jury box.

This deponent further saith, that the trial of this cause requires witnesses unpaid, numerous, and some of whom reside at a distance. That so far as this deponent knows, several of the prisoner's witnesses who have been in attendance, have withdrawn under the supposition that, having testified on the preliminary issue, their duties were ended, and without any expectation of being obliged again to attend a court which has exacted a large portion of their time during five weeks; and that A. Sidney Doane, an important and, as this deponent believes, an indispensable witness, could not be procured to attend this court, but could be procured at a future time.

This deponent further says, that his client is cast upon his help now, more helpless than ever. That this deponent could not relinquish his defence to any other of the members of the bar who are willing to assume it, without what would seem to be very great danger to the defence. That this deponent's engagements require him to attend the supreme court which commences its session this day at Utica. That other professional business, not inconsiderable, has been necessarily neglected by him absolutely for five weeks past, in consequence of his attendance on this court in behalf of prisoners who needed the highest professional effort without being able to render any reward. That this deponent's private affairs of extreme importance are suffering from neglect, and that he can truly say that his health

and strength have been already so severely taxed that he is apprehensive they will be insufficient to sustain him through the fatigue and labors of a more protracted session of this court.

This deponent doth, therefore, for his own sake, for the sake of his imbecile and insane client, and for the sake of public justice and of humanity, most humbly ask and implore that these indictments may be continued until another term of this court. WILLIAM H. SEWARD.

Sworn before me this sixth day of July, 1846.

PHILIP VAN ARSDALE,
Clerk of Cayuga County.

MR. VAN BUREN opposed the motion, and insisted that the trial proceed without further delay. It was true that it might disoblige the counsel, but he did not believe, and therefore would not concede, that the excitement raged so high but that an impartial jury might be obtained in this case. Sufficient had been already developed to render it obvious that the trial might be had in a very short period of time, unless the prisoner's counsel saw fit to protract it by a defence of insanity. The public demanded the trial of the prisoner, and he must protest against any postponement.

MR. SEWARD felt constrained to say that the public did not demand the trial of this man until he could be fairly tried. Whilst the blood of Freeman can never atone for the homicides, it can never satisfy public justice nor make amends for the wrong of forcing him to be tried by men who have partaken of the excitement which the Fleming tragedy has occasioned. Let it be remembered that the prisoner is incapable of any act respecting his defence, and is without capacity to name or the ability to obtain witnesses.

Motion denied, and decision excepted to.

MR. SEWARD then moved that the indictment be quashed, and interposed a plea that John O'Hara, one of the grand jurors, who found the same, was at the time a brother-in-law of John G. Van Nest. He then read the following affidavit:

CAYUGA OYER AND TERMINER: William Freeman ads. the People.

Cayuga County, ss: Christopher Morgan, of counsel for the defendant, in the indictments above mentioned, says that the said defendant is unable, by reason of mental imbecility, to make a deposition, as this deponent believes. That John O'Hara, one of the grand jurors named in and who found the said indictments, as deponent has been informed and believes, was son-in-law of Mrs. Phebe Wyckoff, brother-in-law of John G. Van Nest, brother-in-law of Mrs. Van Nest, and uncle to George W. Van Nest, all of whom are alleged in the said indictments to have been murdered by the said defendant. CHRISTOPHER MORGAN.

Sworn before me, this sixth day of July, 1846.

PHILIP VAN ARSDALE,
Clerk of Cayuga County.

Motion denied, plea overruled, and decision excepted to.

The court then ordered that the prisoner be put upon trial.

Mr. Seward requested that other counsel might be associated with Mr. Morgan and himself on the defence.

The court appointed David Wright, Esq., as associate counsel, and ordered a jury to be empannelled for the trial.

The prisoner's counsel thereupon interposed the following challenge.

CHALLENGE TO THE ARRAY OF THE PANEL.

Cayuga Oyer and Terminer: William Freeman, ads. the People.

And now at this day, that is to say, on Monday, the sixth day of July, in the year of our Lord one thousand eight hundred and forty-six, came as well the aforesaid William Freeman, in his proper person, as the People aforesaid, by Luman Sherwood, Esquire, district attorney of the county of Cayuga, and the jurors aforesaid, also come, and hereupon the aforesaid William Freeman challenges the array of the panel, because he says that Richard Searing, of Venice, a juror duly returned by the supervisor, town clerk and assessors of his town, to the clerk of the county of Cayuga, as a suitable person to serve as a juror according to law, and who was duly drawn, empannelled, summoned, and returned, and who appeared at this court as a juror, and answered to his name as such, and the ballot of whose name was put into the jury box to be drawn in drawing a jury for this cause, was, without notice to the said William Freeman, in his absence, irregularly and unlawfully, without application by the said Richard Searing, or by any person in his behalf, or by any person whomsoever, discharged from attendance as a juror, by this court. And that the order of this court, entered in the minutes thereof, for the discharge of the said Richard Searing, and the facts therein recited, are untrue and false, and this he is ready to verify. Wherefore, he prays judgment and that the panel may be quashed, &c.

To which challenge the district attorney pleaded the record of the said court in the following words, to wit:

"It having appeared satisfactorily to this court, that Greenfield Iden and Richard Searing are members of the society or religious denomination of Friends, and whose opinions are such as preclude them from finding a defendant guilty of an offence punishable with death, the court discharge them from further attendance as jurors at this court."

Mr. Seward said if the district attorney offered that entry as a plea of justification for the court, he must demur to it, as he then did.

The court overruled the demurrer.

Mr. Wright then replied to said plea, alleging it to be false in fact, and offered proof, by Richard Searing himself, then in court.

The court refused to receive the replication or to hear evidence in relation to the challenge, but overruled the same and ordered the clerk to proceed to empannel the jury.

Decision excepted to.

THE JURORS AND THEIR EXAMINATION.

WILLIAM ROSS, called and answering, was challenged for principal cause by the prisoner's counsel, examined briefly by the court and set aside.

ABIJAH P. OLMSTED called, challenged by prisoner's counsel, and set aside because he was a juror on the preliminary trial.

HENRY ACKER called, challenged by prisoner's counsel, and set aside on same grounds.

BENJAMIN ATWOOD called, was challenged for principal cause, and being sworn, testified: I have heard some of the testimony, and have seen the prisoner. I consider the prisoner an accountable being. That opinion is fixed and settled. It would require some testimony to remove it.

Question by the court—Have you any opinion concerning the guilt of the prisoner from the evidence heard in court? Answer—No sir. I formed that opinion from what I first heard. It was not strengthened by what I heard in court. I formed my opinion that this man committed the murder before I came here.

Challenge sustained. Excepted to by attorney general.

SHELDON GOODRICH called, was challenged for principal cause by prisoner's counsel, and being sworn, testified: I was one of the jurors on the last jury in this cause, and then came to the conclusion that the prisoner was sane, and so found. I have not changed my opinion concerning his sanity. From all I have seen and heard of him I think him guilty, and responsible for his acts.

Challenge sustained.

JAMES AMMERMAN was next called by the clerk, and being challenged by prisoner's counsel, for principal cause, was sworn and testified: I believe the prisoner or somebody else killed John G. Van Nest. I believe he is the person who killed him. I made up that opinion at first. I was present at the funeral. I made up my opinion on what I heard, that the prisoner is guilty of murder. I have not heard any of the witnesses sworn. I have no doubt from what I have heard and read that the prisoner is the man. I have read the newspaper accounts of the murder. I saw the bodies brought out of church at the funeral. Was here in court after insanity was pleaded, and part of the time during the trial of that plea. I heard a part of Dr. Brigham's, and a part of Dr. Spencer's testimony. I should judge that the prisoner was sane. As a juror I calculate to go according to the witnesses. I

think the prisoner, however, is the man that murdered the family, and that he is sane and ought to be punished for it. That is my fixed opinion and has been ever since I was at church.

Cross Examined. I never heard about this insanity until I came here to court. I heard that his name was Freeman, and I heard, too, that the jury brought him in sane. I think there is nothing to prevent me from trying this man fairly. I have no doubt I could try him fairly. I have no feeling or bias that will prevent me from trying him fairly.

Challenge overruled, and exception.

The prisoner's counsel then challenged the juror for favor and demanded triors; whereupon the court appointed counsellors John P. Hulbert and Daniel Andrus.

The court read the foregoing testimony, by consent of counsel, after which the juror further testified: I had thought a man could not be crazy who would get knives and kill these folks as he did, or else folks would have known it and have taken care of him. It is said he stole a horse and ran off. I should think a crazy man wouldn't go off, so I think the prisoner sane. I heard it said that they were going to have a jury of doctors to see if he was sane. When I came, he sat here in court. I heard Van Arsdale and Miss Holmes testify. I heard Van Arsdale identify him. It would take as strong evidence as theirs to remove my opinion. I heard all of Van Arsdale's testimony, and that established my opinion that the prisoner was the guilty man.

Cross Examined. I know Van Arsdale. He is on our side of the lake frequently. If I was sworn as a juror, I should look at the prisoner myself.

Q. Suppose Van Arsdale should swear the other way, would you believe him?

A. I should go according to the witness who should be on the stand at that time. If he should swear it was another man I should go according to evidence.

After counsel had addressed the triors, the court charged them to give patient care to this man's case. None but competent jurors should enter the jury box. Whilst a person having a fixed opinion should be rejected, a man may have an opinion founded on information which will not resist evidence.

The triors found the juror not indifferent.

Charles Eldred was next called, and answering, stated that he had conscientious scruples against finding a verdict of guilty where the punishment is death, and for that reason declined to sit.

Q. by the court. Are you a member of any religious society whose rules forbid capital punishment?

A. I am not a member of any religious society; my scruples are of a civil, not of a religious character. I think a juror should uphold the law as it is, yet I am unwilling to participate in the death of any body. It would be my duty, if I sat as a juror, to render a verdict according to evidence. If he

was guilty it would be my duty so to find. But I have conscientious scruples against sitting as a juror at all in this case.

Juror discharged. Exception.

CYRUS H. DAVIS was next called by the clerk, and answering, was challenged by the attorney general; on being sworn he testified: I was on the former jury in this case, and have heard the testimony relating to the prisoner. From the testimony that I have heard I think the prisoner irresponsible, and would under no circumstances find him guilty.

Challenge sustained.

THOMAS J. SLATER was next called, and answering, was challenged for principal cause, by the prisoner's counsel, and being sworn, testified: I have the same opinion now that I had when called to try the issue of insanity. I thought him a sane man then, and the evidence that I have heard since has strengthened my opinion. It would require stronger evidence than any I have heard here to remove that opinion.

CROSS-EXAMINATION.—I did not know Van Nest. I have been here only part of the time. I saw the prisoner for the first time on the first day of June. I have no feeling of prejudice on my mind that would prevent me from weighing the evidence. I should feel it my duty to hear the evidence, but I don't know that I could give all the evidence its proper weight. I formed my opinion upon an account of the coroner's inquest. I have heard most of the testimony given in court. From that evidence I believe the man is guilty. I have expressed that as my fixed opinion.

Challenge sustained.

LYMAN SOULE was next called, and answering, was challenged for principal cause by the prisoner's counsel. On being sworn, he testified: I have a fixed and settled opinion that the prisoner is guilty of the murder of the Van Nest family. From his confessions, and from the evidence, I have no doubt of it. I also have a fixed opinion that the prisoner was sane when he committed the act.

Challenge sustained.

JOHN BIDWELL was next called, and answering, was challenged for principal cause, and being sworn to answer, testified: In my opinion the prisoner is guilty. I formed that opinion when I read the account of the murders. I have also an opinion that he is sane and accountable, and it would take stronger evidence than any I have heard to remove that opinion.

CROSS-EXAMINATION.—Q. Suppose Dr. Pitney should swear he was insane, what would you think then?

A. I don't know but I should believe it. My mind is open to a fair consideration of the cause. I have no prejudice or bias that would prevent me from trying him fairly as a juror. I am not sensible of any prejudice that would resist the evidence or struggle against it.

Challenge sustained.

WILLIAM E. VAIL was next called, and answering, was challenged for

principal cause by the prisoner's counsel, and being sworn, testified: From the evidence, I believe the prisoner guilty. I saw the prisoner brought into court. Have seen him since. Have heard the testimony of Dr. Brigham. I think the prisoner sane. I think so from the way he prepared his knives, and the way he escaped. I read the account of it in the newspapers, and then formed my opinion.

CROSS-EXAMINED.—I live west of Auburn. I did not hear Doctor McCall's testimony. Heard a part of Dr. Brigham's. If Dr. Pitney should testify that he is insane, I don't know as I would believe he was insane then.

Challenge sustained.

MARTIN HOSFORD was next called, and answering, was challenged for principal cause, and being sworn to answer, said he had no doubt of the prisoner's guilt.

Challenge sustained.

GEORGE H. CARR was next called, and answering, was challenged for principal cause, and being sworn to answer, &c., testified: I have expressed the opinion that the prisoner is guilty of the murder of the Van Nest family, and that he is sane. That is my opinion now.

Challenge sustained.

BENJAMIN TAYLOR was next called, and answering, was challenged for principal cause, and being sworn to answer, &c., testified in substance as the last.

Challenge sustained.

EDWARD MOREY was next called, and answering, was challenged for principal cause, and being sworn to answer, &c., testified: I have heard much of this case and have conversed about it. I have formed an opinion that the prisoner killed the Van Nest family, and that the killing was a wicked, wilful murder. I formed that opinion from the evidence given upon the coroner's jury, and it has not been changed by any thing I have heard here.

Challenge sustained.

SAMUEL GUERNSEY was next called, and answering, was challenged for principal cause, and being sworn to answer, &c., testified in substance the same as the last.

Challenge sustained.

JOHN VOSLER was next called, challenged, and disposed of the same as the last.

THOMAS F. GRAHAM was next called, and answering, was challenged for principal cause, and being sworn, said: I desire to be excused from serving on this jury. I have conscientious scruples about finding a man guilty where the punishment is death.

Excused.

CORNELIUS FLINT was next called, and answering, was challenged for principal cause, and being sworn, testified: I have heard much of this case,

but had not fully come to a conclusion about it until I came here. I now think the prisoner guilty. I think he was sane when he acknowledged the commission of the crime. Until I hear testimony as strong the other way, I cannot change that opinion.

Challenge sustained.

JOEL HOFF was next called, and answering, was challenged for principal cause, and being sworn, testified: The prisoner is guilty of the murders alleged. It is a case of wicked, deliberate murder, done when he was in his senses, and he is morally responsible.

Challenge sustained.

ANDREWS PRESTON was next called, and answering, was sworn as a juror to try the prisoner. (1)

WILLIAM STEEL was next called, and answering, was challenged for principal cause, and being sworn to answer, testified: I have formed an opinion of the guilt of the prisoner. That opinion is that he is guilty. That is a deliberate opinion, which has been freely expressed. I formed that opinion from what I have both heard and read concerning this affair, as well before as upon the preliminary trial. I have had my doubts some whether or not the prisoner is responsible, but I heard the testimony of Dr. Brigham and others, and did not really find any occasion to change my previous opinion. The evidence which I heard rather confirmed it. A crazy man is one void of common sense.

Challenge sustained.

LYMAN ROYCE was next called, and answering, was challenged for principal cause, and being sworn, testified: When I first heard of the murder of the Van Nest family and the arrest of the prisoner, I thought him guilty of murder. It has been my opinion ever since. I formed it from reading the newspapers. As to his sanity, I have formed no fixed opinion one way or the other. I consider my mind open on that subject. I have not been able to satisfy myself in relation to that.

Challenge withdrawn.

Q. by attorney general. What is your opinion concerning capital punishment?

A. It is, that the law as it is should be executed.

LYMAN ROYCE was then sworn as a juror to try the prisoner. (2)

The number of ballots in the box being reduced below twenty-four, the counsel for the prisoner objected to the drawing further from the box until there were at least that number in it from which to draw.

The court overruled the objection, and decided that all that was required was that there should be at least twenty-four ballots in the box when the drawing commenced.

Excepted to.

LEMUEL A. NEWLAND was next called, and answering, was challenged for principal cause, and being sworn, testified: I think the prisoner is

guilty, wickedly and deliberately guilty. I read the newspaper accounts of the affair and the testimony taken before the coroner's jury; and that has been my settled opinion from that time until now. The testimony of the prisoner's statements of having committed the murder and how he did it, confirmed my previous opinion. I think he was sane. I presume I have expressed that opinion, also that he ought to be punished.

CROSS-EXAMINATION.—I came to the conclusion that he was sane. I had heard enough to satisfy me, and had formed an opinion that he was responsible. I don't know that there is any thing on my mind to prevent me from weighing the testimony fairly. Don't know but my mind is open to a fair consideration of the evidence. I think I have command of my mind.

Challenge sustained.

PETER G. FOSDICK was next called, and answering, was challenged for principal cause, and being affirmed, testified: I have made up my mind that the prisoner is guilty. My opinion is fixed; fixed as the rock of Gibraltar.

Challenge sustained.

ABEL CHASE was next called, and answering, was challenged for principal cause, and being sworn, testified: I have formed an opinion that the prisoner is guilty of murder as alleged in the indictment. I formed it from reading the testimony on the coroner's inquest, and it has remained unchanged. I have heard a part of the testimony, and that has confirmed my opinion, so that I have now a firm and established opinion that the prisoner is guilty.

Challenge sustained.

WASHINGTON BOGARDUS called, and answering, was challenged for principal cause, and being sworn, testified: I have formed an opinion that the prisoner is both guilty and sane, and have so expressed myself.

Challenge sustained.

WILLIAM TREMAINE called, and answering, was challenged for principal cause, and being sworn, testified: I have never expressed any opinion that the prisoner is guilty, and don't know as I have formed any. I have heard a part of the testimony given on the preliminary issue, but I don't know as I formed any opinion. I did not know but he might have killed these persons. I read the testimony published, but I left the matter for further disclosures. I don't know but he may be sane. There was testimony for and against his insanity.

Challenge withdrawn.

Q. by attorney general. Have you any scruples about finding a man guilty where the punishment is death?

A. I have not. The law ought to be carried out.

WILLIAM TREMAINE was then sworn as a juror. (3)

HARVEY C. BEACH was next called, and answering, was challenged for principal cause, and being sworn, testified: I am of opinion that the pri-

soner is guilty, and have repeatedly expressed that opinion to others. I think him sane enough to be responsible for his acts, and it would take more testimony than I have heard to remove that opinion.

Challenge sustained.

JACOB BOGERT called, challenged for principal cause, sworn, and set aside for the same reason.

ADAM FRIES was then called, and being challenged, was sworn, and testified: I have no doubt he is guilty if he is the man. I was at Van Nest's house when the prisoner was brought there, and it was the common talk that he was the man. I was at church at the funeral—heard the sermon of Mr. Winfield, and have heard some of the testimony. I cannot tell whether the prisoner is the man or not, yet I think he is guilty. When the man who sold the knife testified, I became satisfied the prisoner was the man. It is my opinion that the man who committed the murders ought to be hung. Don't know but I have said that Freeman ought to be hung.

Challenge sustained.

JACOB H. ROSA called, and answering, was challenged, and being sworn, testified that he had formed an opinion that the prisoner was guilty.

Challenge sustained.

ISAAC FOLLETT and JOSEPH THOMPSON the same.

JOHN R. HOPKINS called, and answering, was challenged by the attorney general, who demanded that the question be tried by triors.

The first two jurors were appointed and sworn as triors. The juror after being affirmed, testified: I was sworn on the preliminary trial as witness in relation to the mental condition of the prisoner. I have been to see him in the jail. I have more than once expressed an opinion as to the state of his mind, but not that he was irresponsible. I do not think he is responsible in the degree that men of higher intellect are, but I have not expressed an opinion that he is not responsible in any degree. I said that from my intercourse with him, my general conclusion was that I believed him a monomaniac upon the subject of pay; and that he was of low intellect. I was requested to see him by Mr. Seward, I presume with a view to learn the state of his mind and to testify. I have requested others to see him. I requested Mr. Horace Hotchkiss for one. I requested him to go with me to see the prisoner, to ascertain the state of his mind. I have taken a general interest in this man as I have in other cases. I was never a witness in a capital case before. In conversation I believe I have always maintained the opinion I now express.

CROSS-EXAMINATION.—The opinion I formed was upon those interviews. I don't design to entertain any opinions that are fixed. I don't think I have an opinion on any subject that would resist evidence. I am not conscious of having any thing on my mind that would prevent me from trying this cause fairly between the people and the prisoner. I never formed an opinion that the prisoner was not sane at the time the acts were committed. I have not

any fixed or deliberate opinion upon that subject. I suppose it is impossible for men to get rid of impressions. My mind is not closed against evidence, nor would it resist it. My mind would not struggle against evidence of the prisoner's guilt, nor with evidence relating to his sanity. I was present during a considerable part of the trial. I heard a part of Dr. Brigham's testimony. I heard a part of Dr. Bigelow's. Did not hear Dr. Darrow nor Dr. Spencer, nor Wood, nor Lynch. Taylor and Churchill went with me the first time to see the prisoner.

Re-Examination. If Taylor and Churchill should swear to a state of facts different from what I saw, I should, as a juror, be obliged to believe them. If they should swear I did not see the prisoner, I would not believe them. Sitting as a juror I should be obliged to throw away my own knowledge.

Q. Are you opposed to capital punishment?

A. Society has a right to decide whether it is, or is not necessary. I think it would be well to try other modes of punishment. I have thought so, but I can't say so now. My mind is somewhat unsettled upon that point. I have sometimes thought I should not be willing to sit as a juror in a capital case, but I think if I sat upon a jury in a capital case, that I would try to bring in a verdict according to evidence.

Counsel on both sides addressed the triors at length, on the subject of the indifference of the juror, when his honor, the circuit judge, charged them and they retired. On coming into court, they say they find the juror "not indifferent."

The panel having been exhausted, the court ordered the sheriff to summon thirty persons qualified to serve as jurors, from the body of the people of the county, and that he furnish to the prisoner's counsel a list of them before returning them to the court.

The list being returned, the clerk proceeded to draw.

Argelos Taylor was next drawn, and answering, was challenged for principal cause by the counsel for the prisoner, and being sworn to answer touching his indifference as a juror, testified: From what I have read of the accounts of the murder, I have formed an opinion that the prisoner is guilty. From what I have learned of the circumstances, I should say I had formed an opinion that he was guilty of the murder of John G. Van Nest, his wife, child, and Mrs. Wyckoff. I have had that opinion since I read the account of the examination on the coroner's inquest, and from what I have since heard; also from the examination of Van Arsdale before the magistrate. I have read accounts in the papers since the examinations. I read the account with which there was a portrait of the negro, and a plan of the house. I made up my mind then, and it is my opinion since, and it is my deliberate and settled opinion. The proof on the trial might turn it some; might change it, but I should want proof. Before I could relinquish that opinion, I must have proof that the prisoner is not guilty. My mind now presumes the pri

soner guilty. I have expressed this opinion heretofore in a number of conversations. I have said the prisoner ought to be hung from the reports I have heard, which I still believe, and that is now my opinion; which reports I never heard contradicted, and have no reason to disbelieve them. I have heard conversation about prisoner's sanity. From what conversation I have heard I have formed an opinion that he was sane. I made up that opinion partly from the preparations he made for the murder, and partly from what I heard, and his flight. This is now my opinion.

Cross Examination. I saw John G. Van Nest a number of years ago; some ten years ago; had no particular acquaintance with him. I saw the prisoner in Auburn, before he went to the State Prison. I knew who he was but had no particular acquaintance with him. I don't know as I ever saw any one that knew the facts. I never said the prisoner ought to be hung, whether guilty or not. I said if the accounts and reports were true he was guilty and ought to be hung for it. I took them to be true, and I never heard them contradicted. I have no means of knowing whether he was guilty, except from reports.

Q. Do you recollect any of the particulars of the examination of Van Arsdale?

A. I don't know that I can relate the particulars; don't recollect the particulars of what I did read.

Q. Are you conscious of any thing on your mind that would prevent you from weighing the evidence?

A. Nothing except the reports I have heard. I don't know any thing else against him. I know of nothing myself. I don't know that I have any doubts but that I could weigh the evidence fairly.

Q. If sworn as a juror are you conscious of any thing on your mind that would resist the evidence and struggle against it?

A. I don't know that my opinion that he is guilty would have any influence on my mind. I should think I had not such an opinion. I don't know whether it would have any weight on the trial or not.

Q. What is your best belief about it?

A. I should think I had not.

Q. Is your mind open as far as you know to a fair consideration of the case?

A. I don't know but it is.

Q. Don't you know that it is, as far as you are conscious?

A. Why, yes sir, I should think it was.

Re-Examination. I don't know hardly what my opinion would be if I should hear the evidence. I would try to do as well as I could according to the evidence, and that is what I mean when I say my mind is open. I don't know as my mind is as much fixed as it would be if I had been a juror and had heard the evidence. I have an opinion, without any doubt, that the prisoner is guilty of murder. It might be removed by evidence to con-

tradict it. I don't know that it is a mere matter of speculation as to my ability to remove my present opinion. I think my mind, if I were in the jury box, would be the same as now. I could not forget what I had heard. I couldn't say that it would operate on my mind. It would be in my mind; I could not forget it. I mean to say strong evidence of prisoner's innocence would be necessary to remove my impression of his guilt. I recollect of reading the examination of Van Arsdale, identifying this man as the murderer at the house and in the presence of the dead bodies. I recollect Miss Holmes testified about going to the hall door and opening it for Mrs. Van Nest to come in, and I think these examinations were taken under oath.

Cross Examination. I don't know but I could go according to evidence. I said I didn't know hardly what my opinion would be if I should hear the evidence.

Q. When you say you have an opinion without doubt, do you mean that you have heard the reports and have no reason to doubt them?

A. Yes; that I heard the reports and formed my opinion upon them.

Q. If you have heard, or know, or feel any thing which would prevent you from weighing the evidence fairly, state it?

A. I don't know of any thing more than what I have read and heard about it. I feel as if I ought to be bound, as a juror, to act according to the evidence, and I feel that I could do so.

Q. by Judge Richardson, one of the court. If you were sworn as a juror to give a verdict according to evidence, would you find a verdict of guilty upon the opinion you have formed without any evidence on the part of the people?

Question objected to by prisoner's counsel, and objection overruled.

A. No.

Q. Has your opinion been so formed that if the evidence shall prove the prisoner to be guilty you will find him guilty?

Objected to and objection overruled.

A. Yes.

Re-Examination. Q. If you had seen this murder committed, and should be sworn as a juror to try the case, would you not feel just as much confidence that you could exclude the opinion you have formed and give a verdict according to evidence as now?

A. I think not, for I should know it were so.

Q. Would you not be bound to reject what you had seen and give a verdict on the evidence?

A. I don't know how I could get around it. I should think it was so. I should believe what I saw.

Q. Had you seen this murder committed, and were sworn as a juror, would you feel entitled to give a verdict upon what you had seen, or would you require evidence and feel bound to go according to law and evidence?

A. If I had seen it with my own eyes, and I should be a juror, and evidence should be to the contrary, I think I should believe what I saw.

Q. Could that influence you in giving your verdict?

A. I think not.

Challenge overruled, and decision excepted to.

The prisoner's counsel then challenged the juror for favor, and demanded triors.

The court, by consent, read the foregoing testimony to the triors.

After remarks of counsel, the court charged them that it was manifest that the important question to be tried by the jury to be empannelled, was the question of sanity or insanity. The trial upon the preliminary issue has settled but one point as to that, viz: that he was sane at the time of rendering that verdict. The law presumes a man to be sane until the contrary is clearly proved. The juror indulging an opinion that the prisoner was sane at the time the act was committed, being but a legal presumption, does not disqualify him, unless the juror had attended a trial upon that issue, and heard the testimony and made up his mind upon that. The case of this juror is distinguished from the case of Hopkins, who was challenged by the attorney general, and found by you to be not indifferent. He had formed his opinion from personal observation of the prisoner, not from information. In this case the opinion is formed from information. If the juror had got the information from those who knew, the opinion would be stronger. If you find the opinion of the juror so strong, as in your opinion to influence his action and thus disqualify him, then he is not indifferent. On the other hand, if you find the opinion a floating one, and such as may be removed by the evidence, and that he will give an impartial verdict from the testimony, he is competent. If it is formed upon a supposition that certain facts be true, then it is a hypothetical opinion, and does not disqualify him, as that presupposes that the facts are to be proved. The rule for determining the indifference of jurors by which this court have been governed, is laid down in the opinion of Chief Justice Marshall, on the trial of Aaron Burr for treason. (The court then read from Burr's trial, as follows:) "Were it possible to obtain a jury without any preposessions whatever, respecting the guilt or innocence of the accused, it would be extremely desirable to obtain such a jury; but this is, perhaps, impossible, and therefore will not be required. The opinion which has been avowed by this court is, that light impressions which may fairly be supposed to yield to the testimony that may be offered, which may leave the mind open to a fair consideration of that testimony, constitute no sufficient objection to a juror. But that those strong and deep impressions which will close the mind against the testimony that may be offered in opposition to them, which will combat that testimony and resist its force, do constitute a sufficient objection to him. Those who try the impartiality of a juror ought to test him by this rule. They ought to hear the statement made by himself or given by others, and conscientiously determine according to their best judgment

whether, in general, men under such circumstances, ought to be considered as capable of hearing fairly, and of deciding impartially, on the testimony which may be offered to them, or as possessing minds in a situation to struggle against the conviction which that testimony might be calculated to produce. The court have considered those who have deliberately formed and delivered an opinion on the guilt of the prisoner, as not being in a state of mind fairly to weigh the testimony, and, therefore, as being disqualified to serve as jurors in the case." That is the law as applicable to this case, and sets forth the rule which you will observe in arriving at your verdict.

Charge excepted to by prisoner's counsel, after which the triors retired, but after deliberating for a while, they came into court and asked for further instruction; whereupon His Honor, the circuit judge, remarked to them: "If the juror says he has formed a fixed and deliberate opinion, he is not indifferent. But you are to look at the whole examination, and say whether he has such an opinion as will resist the evidence; if he has, he is not indifferent. If you believe his mind is open to a fair and impartial consideration of the evidence, then he is a proper juror. Courts would at all times be bound to declare a juror not indifferent when he has stated that he had formed a deliberate opinion."

Mr. Preston, one of the triors, inquired whether an opinion formed from reading the accounts in a newspaper could be called a deliberate opinion.

His Honor replied, "that it was difficult to understand how a man could be said to form a deliberate opinion upon a mere matter of information; but that is a question for the triors. The resort to the triors, by the prisoner's counsel, is in the nature of an appeal from the opinion of the court upon the facts. The question of law is the same before the court in some respects. The court apply the law and exclude a juror when there is no dispute about the facts as to the state of the juror's mind. In this case it is for the triors to determine upon the indifference of the juror. The triors must find whether the opinion which the juror has formed will have a controlling effect upon him in opposition to the evidence in favor of the prisoner; if it will, the juror is not indifferent."

The prisoner's counsel excepted to the above, and requested the court to charge the triors that if they find that the juror has formed an opinion which will exert any influence upon his mind in the jury box, then he is not in law indifferent.

His Honor declined to vary his charge. Excepted to.

The triors report that they find the juror indifferent.

The prisoner's counsel then challenged the juror peremptorily, and he was set aside.

JOHN MILLER was next called, and answering, was challenged for principal cause, and being sworn, testified: If what I have heard and read is true I think the prisoner is guilty and ought to be hanged. I never heard any one talk of it who was there. I supposed the accounts given of the matter

were true, as I never heard to the contrary. I have heard folks say it was the greatest murder they ever heard of, and that he ought to be hung; and I may have said the same, and think it is likely I have. I heard they talked of Lynching him at the house. I might have said that would have been well enough. I thought he ought to be hung. I may have said he ought to be hung without a trial. I have said the trial took a good deal of time, and I see now that it will take more time than I thought it would when I came here. I have believed him guilty ever since I heard of the murder.

By the court: The juror's opinion seems entirely hypothetical.

Challenge overruled. Exception.

The juror was then challenged for favor, and found by Preston and Royce, triors, to be not indifferent.

HENRY CHADDERDON was next called, and answering, was challenged for principal cause, and being sworn, testified: I thought the prisoner committed the murders from what I have heard. I heard that a colored man committed the crime, but did not know his name. I may have been told that he was recently from State Prison. I heard a person read about the case in a newspaper, which stated that the murder was committed by William Freeman. I heard that he was there a few days before; pretended to be deaf; tried to get work, and then went and committed the murders in the night. That he stabbed Mrs. Van Nest first, out door, then Mr. Van Nest in the house, then stabbed the old lady, then the child, and then the young man. If these reports are true, my mind is fixed that he is guilty and ought to be punished. I think I have no impression that would prevent me from weighing the evidence fairly.

CROSS EXAMINATION. Q. What do you mean by your opinion being fixed. Do you mean any thing else than that you have heard this story and do not know whether it is true or not?

A. That is all.

Q. Have you any feeling against the man?

A. I have not.

Q. Have you any opinion or impression that will prevent you from weighing the evidence fairly?

A. I think not.

Q. Don't you know you have not.

A. Yes; I know I havn't.

Q. Is your mind open to a fair consideration of this case?

A. It is; yet I never heard any one express a doubt that the report was true.

RE-EXAMINATION. Q. Have you not an opinion that he is guilty until it shall be removed by evidence to the contrary?

A. I have.

Q. Can you tell whether it will resist evidence?

A. I should think it would not.

Q. Why do you think so? Have you ever tried it in such a case?

A. I never have.

Q. Might you not find it difficult to give up your opinion?

A. I don't think I would.

Challenge overruled.

Prisoner's counsel then challenged the juror for favor, and demanded triors, who, after hearing evidence in substance as above, and being charged, say they find the juror indifferent.

He was then challenged peremptorily and set aside.

James Rhoades was next called, and answering, was challenged for principal cause, and being sworn, testified: I have frequently heard this matter talked about, and have believed the prisoner guilty of murder. I have been told since I came here that the prisoner is the man who committed the murders, and I think he is guilty. My mind is not made up as to whether he was sane or not. I heard they talked of Lynching him at Van Nest's house; that the people were very much excited there. I don't think I have any doubt that the prisoner killed them. I think he is the man, and shall believe he was the man until I hear something to the contrary, and I should require pretty strong evidence to induce me to change that belief. I think I would be more likely to believe evidence against him than for him, after all that I have heard. I would feel bound, however, to give a verdict according to law.

Challenge sustained.

Ansel Bruce was next called, and answering, was challenged for principal cause, and being sworn, testified: I cannot really say I have formed any opinion, and have never said much about this case. I read the account and the testimony taken at the coroner's inquest, in the newspapers. When I heard that he was arrested, I made up my mind that he would have a trial, and if guilty would be dealt with accordingly. I did not know who did it, but I made up my mind that it was a wicked and deliberate murder in someone; a wilful and cruel murder. If it is proved that he is the man, it would settle the whole matter in my mind. I have heard that he was identified by Van Arsdale, and if he should be identified on the trial I should think the charge fully made out. I think there can be no evidence that Van Nest was not killed. I have no doubt but that I could find a verdict according to the testimony. I have no feeling or excitement that would prevent me, nor any bias.

Challenge overruled.

Prisoner's counsel then challenged the juror for favor, and demanded triors, who, after hearing testimony, in substance as above, found the juror indifferent, when he was challenged peremptorily and set aside.

James S. Johnson was next called, and answering, was challenged for

principal cause, and being sworn, testified in substance, the same as last juror, and challenge overruled. He was then challenged for favor, found indifferent by triors, then challenged peremptorily and set aside.

The panel being again exhausted, the court ordered the sheriff to summon twenty other men from the body of the people of the county, to serve as jurors.

JOHN JONES was next called, and answering, was challenged for principal cause, and being sworn, testified: I was summoned here, I suppose, at the suggestion of Samuel Bell. I don't know as I ever told him that I would do him as good a favor some other time, and don't know but I have. It is a very busy time to be called out. I don't know but I did say that if it was through Bell's means that I was called here, I would do him as good a favor some other time. From the papers and what I have heard, I have formed an opinion that the negro is guilty of the crime, and have expressed that opinion quite frequently. I have said that he ought to be hung if that report were true. My mind is that he is guilty. Before I can change that opinion I must have evidence to the contrary. I think I should be more inclined to receive evidence corroborative than evidence to the contrary. Bell told me they had found the black man sane.

CROSS EXAMINATION. Mr. Bell is one of the assemblymen from this county. He is a very respectable man. I suppose it would be better for me to be trying this cause than to have my family killed. Hoskins, the deputy sheriff, summoned me.

Q. Have you any impression about this case that would prevent you from weighing the evidence fairly?

A. No, sir; I think not.

Q. Do you mean to say that you would receive evidence against him more favorably than for him?

A. I could tell better if I could hear the evidence.

Q. Do you feel any thing in your mind now that induces you to believe you would receive evidence against the prisoner more favorably than for him?

A. No.

Q. Is your mind open to a fair consideration of this case?

A. Yes, sir.

AUGUSTUS PETTIBONE, called as a witness, and being sworn, testified: I am sheriff of this county. I undertook to get a jury in this case.

Q. Did Samuel Bell suggest to you the name of John Jones as a juror?

A. Some one handed me a list of names during the Wyatt trial, and his name was on the list.

Q. Did you follow that list?

A. I think likely I drew off the name of John Jones from that letter, to summon him this time.

Q. Will you produce that letter?

A. Yes, sir. This is it. (Here exhibits a letter addressed to him, signed Samuel Bell, and containing a list of persons proper to be summoned as talesmen, among whom is the name of John Jones.)

The court overruled the challenge. Excepted to.

The juror was then challenged for favor. Triors demanded and appointed, and the foregoing testimony, in substance, read to them by consent.

By the court: It is said that here is an attempt to pack a jury; if so, it is the first attempt I ever heard or read of in the United States. His Honor then referred to the Irish rebellion and O'Connell's trial. He was not prepared to believe that any person in this country was so corrupt as to be guilty of the practice; yet the testimony of the juror, as well as that of Pettibone, should be closely and carefully examined. Excepted to.

Verdict: that juror is indifferent.

He was then challenged peremptorily and set aside.

ELIAS MILLER was next called, and answering, was challenged for principal cause, and being sworn, testified: I read of the murder of the Van Nest family and believed it. I was told yesterday that it was through Samuel Bell that I was summoned here. I formed an opinion from what I read, and other reports, that the prisoner was a murderer. It would require considerable strong proof to remove that opinion. Think I should be more likely to believe evidence against him than for him.

CROSS-EXAMINATION.—Q. If you were sworn as a juror, would any thing you have heard induce you to give a verdict, if no proof was given?

A. I think not.

Q. Would what you have heard be any evidence to you as a juror?

A. I shouldn't think it evidence enough to convict him.

Q. Would you consider it any evidence?

A. Not in this case.

Q. When you say you have formed an opinion, do you mean more than that you have heard of it and supposed it to be true?

A. I have never heard it contradicted and supposed it true.

Q. Do you know any thing of this matter yourself?

A. I do not.

Q. Is your mind open to a fair consideration of the testimony?

A. I believe it is as far as I know.

Q. Suppose some of the witnesses swore in his favor and some against him, would you give the same weight to both?

A. I don't know as I should, if it was equal.

Q. Can you weigh the evidence fairly?

A. I don't think I could. I think I could not.

Q. Why?

A. Why, I have heard a great deal against him and believe it to be true, and I don't think I could give equal weight to evidence that should go to show him innocent. Challenge sustained.

THOMAS C. MCFARLANE called, and answering, was sworn as a juror. (4)

JOHN CHRISTIAN called, and answering, was sworn as a juror. (5)

NORMAN PETERS called, and answering, was challenged by the attorney general, and being sworn to answer, testified: I have no conscientious scruples against finding a verdict of guilty where the punishment is death, where the evidence shows clearly the guilt of the party on trial. I don't know as I would be called an abolitionist, yet I have voted that ticket and have voted other tickets.

Q. Suppose it should be proved that the prisoner is a poor demented negro, would you think society ought to be punished and not the negro?

A. I should hold him responsible the same as any other man.

Challenge withdrawn and juror sworn. (6)

MATTHEW J. CONKLIN called, and answering, was challenged for principal cause, and being sworn, testified: I heard of this murder soon after it took place. Have heard different remarks made about it. I have said if it was true, that no punishment was too bad for him. If he is guilty of the crime he ought to be hung. I believe he is guilty. I have heard nothing to contradict it. That opinion is founded on the reports. It has not created a prejudice in my mind. From report I have no doubt but he killed Van Nest. It would require evidence to remove that opinion.

Challenge overruled and challenge to the favor interposed, and triors appointed. Verdict indifferent.

Juror was then challenged peremptorily and set aside.

BENJAMIN BEACH called, and answering, was challenged for principal cause, and being sworn, testified: I have heard this murder talked about. Have heard the coroner's inquest read in part. I don't recollect reading any thing since. I believe the Van Nest family were murdered, and, according to accounts, I had no reason to disbelieve it. But I can't say the prisoner is guilty, for I have read accounts that men have been hung who were not guilty. At times I have doubted whether he was guilty. I have expressed my opinion that if he murdered the family he ought to be hung, but never said he was guilty, because I did not know. I rather leaned to the opinion that he was guilty, but I have doubted it. My belief now is that I rather think he has murdered the family. It is a pretty strong impression, but if evidence came forward that he was innocent I would believe it. If the testimony was equal on both sides, I would throw away my impressions. My present belief would not turn the scale. I should not want to act upon my belief, and would not. I have heard nothing of his sanity, only that he was going to be tried on that first. I am rather induced to think, from all accounts, that he was sane. If the evidence was equal I would not hang him. I would not put a man to death unless I knew he was guilty. I have heard of the attempts to Lynch him. I said if he had done it, it was not too good for him. I was excited then, but I don't think so now.

Challenge overruled. Decision excepted to.

Prisoner's counsel then challenged the juror for favor, and demanded triors, who were appointed and sworn, and the foregoing evidence submitted to them by consent.

The court then charged the triors in substance as in the case of the juror Taylor, [ante 159,] which was excepted to.

The triors found him indifferent, and he was then sworn as a juror. (7)

GARRET V. PEAK was next called, and answering, was challenged, but the same was withdrawn, and he was sworn as a juror. (8)

JAMES MCLEOD was next called, but was discharged on his testifying that he believed capital punishment wrong, and had conscientious scruples against finding a verdict of guilty where the punishment is death.

Juror discharged.

JACOB CROWLEY was next called and discharged on the same grounds.

JOSEPH WESTON was next called, and answering, was challenged for principal cause, and, on being sworn, it appeared that he had formed an opinion that the prisoner was guilty, and he was discharged.

TOMPKINS TRIPP was next called, and answering, was challenged by the attorney general, and being sworn, said:

Q. Are you an abolitionist?

Objected to and objection sustained.

Q. Have you any peculiar views as to colored persons which would affect your verdict?

A. No. I should endeavor to hold him, as I should other men, accountable for his acts.

Q. Would you attach no more weight to the testimony of colored persons than to white?

A. I should not.

Challenge withdrawn and juror sworn. (9)

JOHN P. HUNTER was next called, and answering, was challenged for principal cause, and set aside on the ground of having formed and expressed an opinion of the guilt of the prisoner.

PRESTON THOMPSON was next called, challenged and discharged on the same grounds.

NELSON BURKE was called and disposed of in the same manner.

NATHANIEL C. CARY was next called, and answering, was challenged for principal cause, and being sworn, said his mind was open to a fair consideration of the evidence.

The challenge was overruled, but he was challenged peremptorily and set aside.

CHARLES COMSTOCK was next called, and answering, was challenged and set aside.

NATHANIEL VILAS was next called and challenged peremptorily, and set aside.

OBADIAH A. COOPER was next called, and answering, was challenged for principal cause, and being sworn, testified: I have heard of this murder, and when people thought Lynch-law ought to be applied to him I felt sorry, and reasoned with them. What I have read and heard, has brought conviction to my mind that such a family was murdered, and that the prisoner murdered them, and I now believe that as I do other historical facts. I should not give any more weight to the evidence confirming my opinion than to evidence contradicting it. The heart is deceitful, but I think I can weigh the evidence fairly.

Challenge withdrawn and juror sworn. (10)

ARCHER MACOMBER was next called, and answering was not challenged, but was interrogated by the court in respect to scruples of conscience about finding a prisoner guilty where the punishment is death; but as the juror said he had no conscientious scruples, he was sworn. (11)

WILLIAM B. SCHOBEY was next called, and answering, was challenged for principal cause by the prisoner's counsel, and being sworn, testified: I have formed an opinion that the prisoner is guilty of murder, and have expressed it in plain language. I have said that he ought to be executed, the sooner the better. I think I may have said he ought to have been executed without a trial, but not in this place. As to his sanity, I think he was a sane man—as sane as men in his condition usually are, and that he is responsible. I have expressed an opinion that there was not a pretence of insanity in his case. I feel that I should not be an indifferent juror in this case.

CROSS-EXAMINATION.—I have stated my opinions on this subject yesterday and to-day. I presume I said so to Mr. Morgan this morning. I spoke to Mr. Morgan about being called sooner; told him I thought him guilty. I have a clear and decided opinion that he is guilty.

Challenge sustained.

WILLIAM CRISE was next called, and answering, was challenged for principal cause by the prisoner's counsel, and being sworn, testified: I have heard and read of the murder of the Van Nest family, and it is said the prisoner murdered them. I have no opinion that would influence my verdict. When I read the accounts in the newspapers I believed that Freeman murdered them. I think I read Van Arsdale's deposition. I have not, nor never had any doubt that the prisoner killed the family, but never expressed any opinion concerning his sanity or insanity. I am not so well satisfied about his state of mind. It would require pretty strong evidence to satisfy me that he did not kill the family. If the evidence was equally balanced, I might believe those who swore he was there, rather than those who should swear he was not. But I think if the testimony was balanced, my opinion would not turn the scale. It might have a bias if the testimony was doubtful.

CROSS-EXAMINATION.—I do not think I have any feeling against the prisoner that would influence my judgment as a juror. I have talked fre-

quently about it, and may have talked with William Allen about it. May have said something to Amos Rathbun directly after the murder. I should think there was no impression resting on my mind that would prevent my weighing the testimony fairly. I should think that I stood indifferent between the people and the prisoner.

Challenge overruled.

The prisoner's counsel then challenged the juror for favor, and demanded triors, to whom the foregoing evidence was submitted by consent. The triors found the juror indifferent.

He was then challenged peremptorily and set aside.

AARON YALE called, and answering, was challenged, and was set aside because of his not having the requisite property qualifications for a juror.

JOHN HUSSEY was next called, and answering, himself asked to be excused from serving, as he was opposed to capital punishment and had conscientious scruples against sitting as a juror in capital cases.

He was discharged.

JOHN C. YAWGER was next called, and answering, was challenged for principal cause by the prisoner's counsel, and being sworn, testified: I have heard and read of the murder of the Van Nest family, and of the general opinion that the prisoner murdered them. Silas Ludlow told me about it. Peter Howell, who was present at the funeral and saw the dead bodies, told me that Freeman killed them, and that he had been caught. I heard he was taken to the house and identified. I read some of the testimony taken before the coroner. Ludlow saw the prisoner in jail, and thought him a pretty hard looking fellow. Flying reports said he had confessed the murder. From all that I have seen and heard I conclude that he is guilty. My opinion now is that he is guilty. I think there is no doubt of it. I have heard the question of his sanity talked about also. I believe him to have been sane at that time. I have no doubt that he was. This opinion might be removed by proof to the contrary. I shall believe it until it is positively proved to the contrary.

CROSS-EXAMINATION.—Q. If you were sworn as a juror, have you any impression that would prevent you from weighing the testimony fairly?

A. Nothing more than that I think him guilty, and should want positive testimony to the contrary.

Q. With your present information could you find a verdict either way?

A. I don't think I could.

Q. Do you not know that it is the duty of the people's counsel to prove him guilty, beyond a reasonable doubt, before you ought to convict him?

A. Yes, sir.

Q. Do you know that you cannot as a juror act upon previous impressions?

A. Yes, sir.

Q. Have you any impression on your mind that will prevent your weighing the evidence fairly?

A. I think I have some little.

Q. Do you know any thing of his guilt except what you have heard and read?

A. I do not.

Q. You say you think you have some little impression on your mind that might prevent you from weighing the evidence?

A. I did say so, but I don't think it will disqualify me from hearing the evidence and finding a verdict in this case according to it.

Q. Have you any desire to have him convicted unless he shall be proved guilty?

A. No, sir; but I must say that it will require strong proof, after all I have heard, to make me think him innocent, or rather stronger proof than if I had never heard of the case before.

Challenge sustained, but finally withdrawn by prisoner's counsel; when he was challenged by the attorney general, who interrogated him about his views of capital punishment; but as the juror testified that he had no conscientious scruples against finding a prisoner guilty in a capital case, it was subsequently withdrawn, and the juror permitted to be sworn to try the prisoner. (12)

TRIAL OF THE MAIN ISSUE.

In court, July 10, 1846. Present, Hon. Bowen Whiting, circuit judge, and Joseph L. Richardson, Isaac Sisson, Abner Hollister, and Walter G. Bradley, associates.

John Van Buren and Luman Sherwood, of counsel for the people.

William H. Seward, David Wright, and Christopher Morgan, for the prisoner.

The clerk proceeded to call the jurors decided competent to try the prisoner, who answered to their names and entered the box, to wit:

1. Andrews Preston,
2. Lyman Royce,
3. William Tremaine,
4. Thomas C. McFarlane,
5. John Christian,
6. Norman Peters,
7. Benjamin Beach.
8. Garret V. Peak,
9. Tompkins Tripp,
10. Obadiah A. Cooper,
11. Archer Macomber,
12. John C. Yawger.

Mr. Sherwood, the district attorney, then opened the case to the jury, in substance as follows:

May it please the Court—

Gentlemen of the Jury: After having spent much time in a fruitless attempt to ascertain, with the aid of the learned counsel and learned witnesses, the mental capacity of the unfortunate prisoner at the bar, we have arrived

at the point, where, in my judgment, it were better for the public and as well for the accused, to have commenced. For I discover from the names of the witnesses, who have just been called by the direction of the prisoner's counsel, that the question of insanity, which has for weeks occupied the attention of this court, and finally been determined by a jury, is to be submitted to you. Of this, however, you will not understand me as complaining. The magnitude of the case you are empanneled to try, will induce you to hear with patience all that may be said by witnesses and counsel in favor of one whose life depends upon your decision.

This cause, and one trial of it, in substance, which has already transpired, have been the subjects of so much public discussion, that it seems almost unnecessary that I should state to you any of the facts concerning it, or any of the evidence upon which the prosecution rely for a conviction of the prisoner. But from the fact that you have been selected from a very large number, for the reason that you knew less than others of the history of this prisoner and the crimes he has committed, and that your minds are unprejudiced in regard to him, you will, doubtless, listen patiently to the relation, which I shall endeavor to give, as briefly as possible, of the history of the prisoner, and the evidence upon which we rely for his conviction.

The prisoner was born in this village, and with the exception of some brief periods of time, has always resided here or in the immediate vicinity of this place. His father was an African—his mother was the offspring of an African and Indian. He resided with different persons in the village, or adjacent to it, during the period of his boyhood and till the age of sixteen or seventeen years, when he was convicted of the crime of larceny for stealing a horse, the property of a widow lady in an adjoining town, and sentenced to State Prison for the term of five years. I am aware of nothing in his character or conduct, previous to that conviction, not common to colored boys in his circumstances and condition in life, except, perhaps, he was more vicious than ordinary boys, which resulted in frequent changes of abode.

During this period his education was entirely neglected, so that he entered the State Prison an ignorant boy at the age of seventeen. You are aware that the discipline of that institution inhibits that social intercourse which, with the uneducated, is essential to their intellectual advancement; and except with the chaplain and principal officers, only admits of such communications between convicts and keepers as are necessary in reference to the work at which the former are engaged. Practically, the chaplain is the only officer from social intercourse with whom convicts may be said to derive any benefit. In this case, that officer found the prisoner so deaf that it was difficult to converse with him, and we may fairly infer that the prisoner's mind could not have been improved by five years' tuition at hard labor in the State Prison. He was discharged from prison on the 20th day of September, 1845. From the time of his discharge until the 12th of March last, (when he committed the crime for which he now stands indicted,) he remained most of

the time in the village, and earned his subsistence principally by sawing wood.

Gentlemen, you will readily see from the hasty narrative I have given of this man's life, that he could not have been otherwise than an ignorant, degraded being. Yet, ignorant and degraded as he was, he had sufficient knowledge to plan a crime, and sufficient sagacity to contrive all the means of its execution; and, that too, with as much skill as the more gifted in intellectual capacity. A few days previous to the commission of this crime, the prisoner purchased of a blacksmith in this village, by the name of Hyatt, this knife, (holding up the knife, then in two parts, a part of the blade having been broken off, with which the murder was supposed to have been committed.) About the same time, or shortly before, he took to the shop of another blacksmith this dirk pattern, (holding up the pattern of a dirk,) and attempted to negotiate for the making of a dirk like it. In these transactions he manifested a regard for money which resulted in his purchasing the knife at half the price which the blacksmith asked for it, and broke off the negotiation for the dirk without a bargain. Failing in procuring the dirk as he desired, he finally obtained a common butcher knife, which he ground on the back and inserted in the end of a club some four feet in length. He was seen with these instruments at a mechanic's shop, in the east part of the village, shortly before the murders were committed; and it will appear in the course of this investigation, from the confessions of the prisoner and from other evidence, that just at twilight on the evening of the 12th of March, he proceeded with these instruments from his boarding house, in the east part of the village, to the house of the deceased, about three miles distant; that he was seen in the vicinity of Van Nest's house about nine o'clock in the evening; that he remained near the house till Van Arsdale, who was staying at the house, had retired to bed in the chamber, and a man by the name of Williamson, who had been spending the evening sociably in the family of Van Nest, had proceeded toward his home in that neighborhood. The family of Van Nest consisted of his wife, three children, Mrs. Wyckoff, (his wife's mother,) a young lady by the name of Helen Holmes, and Van Arsdale. After Williamson had left, and Van Arsdale retired, the prisoner entered the house, and with the knife you have seen, stabbed Van Nest in the breast, penetrating the heart, and inflicting a wound of which he instantly fell lifeless. He then came in contact with Mrs. Van Nest, and stabbed her in the abdomen, inflicting a wound of which she expired in a few minutes. He then proceeded to a bed on which their youngest child, a boy of two years of age, was lying, and thrust the knife entirely through his body, severing the bowels, and inflicting a wound of which he expired after languishing in agony about thirty minutes. He then came in contact with Mrs. Wyckoff, and inflicted upon her a wound of which she died in some two days thereafter. He then proceeded to the room of Van Arsdale and stabbed him in the breast, and had an encounter which resulted in Van Arsdale's driving him from the house·

After this, the prisoner again came in contact with Mrs. Wyckoff at the gate of the door yard, and had an affray, in which she, with a butcher knife with which she had taken the precaution to arm herself, inflicted a wound upon him, severing the tendons of his wrist, and disabling him from further prosecuting the work of death. Mrs. Wyckoff, wounded as she was, proceeded in her night dress to her neighbor's, carrying the marks and giving the alarm of this family slaughter, while the prisoner proceeded to the barn of Van Nest, stole and mounted a horse, and proceeded towards Auburn, passing Williamson in less than a mile from the house of Van Nest, and continued till within a mile of the village, where the horse fell with him. He then left that horse and proceeded to the barn of a man by the name of Burrington, some three miles east of Auburn, where he stole another horse, with which he made his flight, by way of Syracuse and Baldwinsville, to a village in the county of Oswego, where he was arrested, first on suspicion of having stolen the horse, which he there offered for sale, and finally for the crime of which he now stands indicted.

It is proper to call your attention to the fact that the prisoner is, and has for years been, partially deaf. And in this connection I may say that his ability to hear appears to be suddenly effected by circumstances, if not measurably *affected* to suit the occasion. For, when offering this horse for sale, and when charged simply with larceny, those with whom he conversed found little difficulty in making him understand, or in understanding him. But when charged with the higher crime of murder, and when inquiries were made of him concerning it, and from whence he came, he suddenly became so deaf that it was only by threats of violence, which were in some measure executed, that he could be made to hear at all. Upon his arrest, he was taken to the scene of his crimes, where he was identified, and thence to jail to await an indictment and the trial in which we are now engaged.

Gentlemen of the jury, I have thus far given you an outline, a mere sketch of the life and crimes of this prisoner. Under ordinary circumstances and in ordinary cases, I should go no farther, before proceeding directly to the proof by which the charge must be maintained. Nor do I now propose to give you a minute detail of the evidence upon which the indictment is to be sustained. I will not exhaust the patience which the importance of the case will require you to exert in listening to the testimony of witnesses.

The fact that one trial has already been had upon the principal question that involves the guilt or innocence of the defendant, is, I trust, a sufficient apology to detain the cause to allude briefly to some of the circumstances attending it, and the evidence upon which the prisoner's counsel rely for his acquittal.

This indictment was found at the May term of the General Sessions of the Peace, and ordered to this court. On the first day of the present sitting, the prisoner was brought in to be arraigned, and before his arraignment his counsel appeared at the bar and interposed in his behalf the plea of present

insanity. Never before having seen the prisoner, except as he entered the jail upon his arrest, and knowing nothing of his mental condition, I took issue upon that plea, had him remanded to prison, and while another trial was progressing, instituted such investigation, through the aid of medical men and others who were acquainted with the prisoner, his past history and habits, as induced the belief with me and my learned associate that he was in a suitable condition to be tried.

The law of this State (2 R. S. 697, § 2) prescribes that "No act done by a person in a state of insanity, can be punished as an offence; and no insane person can be tried, sentenced to any punishment, or punished for any crime or offence while he continues in that state."

Had my associate or myself believed that the prisoner at the bar was in the condition of one whose trial is inhibited by this section of the statute, we certainly should have saved the court, the jury, and the counsel the labor of a protracted investigation, that resulted in a verdict of sanity. And I doubt not, our learned adversaries will give us credit for believing, not only that the prisoner is *now* sane, but that he *was* so when he committed the horrid crimes that convulsed a neighborhood, by striking from existence a number of its most respected citizens. Yea, gentlemen, solemn and awful as these murders are to dwell upon, their terror sinks into insignificance in comparison with the thought of hanging a *maniac*. God has stamped the maniac with irresponsibility. Our law has recognized the mark, and I trust you will not believe that the public prosecutors would urge this miserable man to trial, in violation of law, and against the common dictates of humanity. We believe the jury that pronounced the prisoner sane was composed of honest men. We believe the court that approvingly received their verdict was also honest. Believing thus, and knowing that most of the evidence upon which the prisoner's counsel rely to establish the prisoner's insanity, has arisen from conversations with him since the commission of his crimes, and since his imprisonment under charge of them—conversations in which the prisoner is himself the principal *actor*, if not the *author* of the disease imputed to him—it seems to me, we would be wanting in fidelity to the public, whose duties we have been delegated to perform, should we refrain from pursuing, with proper diligence, the prosecution of this criminal.

Gentlemen, I am willing to concede honesty to the prisoner's counsel in believing that their client is insane. But in making this concession, I must be allowed to differ with them in judgment of the facts upon which they arrive at such conclusion.

From what I have already said of the prisoner, you must have inferred that he was never in a situation to have obtained much knowledge. On the part of the prosecution we concede that he is an *unlearned*, *ignorant*, *stupid* and *degraded negro*. With this concession, we will not claim for him the power of feigning insanity or any of its appearances, so as to deceive those who have known him, and been familiar with his history and habits. Yet,

gentlemen, you will readily perceive what inducements a man has, charged with a crime like this, to affect a disease which has become the common defence of murderers. And I apprehend you will have learned before the close of this trial, how men of *learning* and of *science* may be deceived by converting natural imbecility and taciturnity into strong "*symptoms*" of mental derangement. In listening to the disquisitions of learned doctors of medicine and of mind, upon the *symptoms* of insanity, within the last few weeks, I have at times been almost led to exclaim, in the language of Festus to Paul, "Thou art beside thyself; much learning doth make thee mad."

Gentlemen of the jury, the main question you will be required to decide, will be the insanity of the prisoner at the time the murder was committed. I might, perhaps, assume that it will scarcely be questioned by his counsel that he took the life of the deceased at the time, and in the manner described in the indictment, and as I have already, in substance, related. It will, however, be necessary first to prove the crime, and that the prisoner committed it. As we shall proceed with this proof, you will discover that the perpetrator must have possessed memory, sagacity, judgment and all the common attributes of mind. There are certain principles established by the sages of the law and sanctioned by the bench for ages, by which criminals have been tried. I will here briefly advert to them, and give the court, (turning to the bench) reference to the authorities:

1. 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. (4 Black. Com. 200.) It is presumed a man had a premeditated design if he kills. (Foster 295, Starkie 514.) The law implies malice if a man does a deliberate, cruel act. (1 Rep. 492.)

2. Every man of the age of discretion, is presumed of sound memory until the contrary appear; which may be, either by the inspection of the court, (1 Hale, 33, trials per pais 14 O. B. 1783 No. 4,) by evidence given to the jury who are charged to try the indictment, (3 Bac. Abr. 81, 1 Hale 33, 5, 6,) or being a collateral issue, the fact may be pleaded and replied to ore tenus, and a venire awarded returnable instanter, in the nature of an inquest of office. (Foster 46, Kel. 13, 1 Lev. 61, 1 Sid. 72, 1 Hawk P. C. ch. 1, § 4, note 5.)

3. *Insanity*, to excuse the commission of a crime, must have existed at the time of the commission of the offence, and such as to deprive the accused of the power of distinguishing between right and wrong.

In the case of Lord Ferrers, who was tried before the House of Lords for murder, it was proved that his Lordship was occasionally insane and incapable, from insanity, of knowing what he did, or judging of the consequences of his actions. But the murder was deliberate, and it appeared that when he committed the crime he had capacity sufficient to *form a design, and know its consequences.* It was urged on the part of the prosecution, that

complete possession of reason was unnecessary to warrant the judgment of the law, and that it was sufficient if the party had such possession of reason as enabled him to comprehend the nature of his actions and *discriminate between moral good and evil.* And he was found guilty and executed. (19 St. Trials by Howell, 947.)

In the case of Arnold for shooting at Lord Onslow, tried before Mr. Justice Tracy, it appeared clearly that the prisoner was, to a certain extent, deranged, and that he had greatly misconceived the conduct of Lord Onslow; but it also appeared that he had *formed a regular design and prepared the proper means for carrying it into effect.* Mr. Justice Tracy left the case with the jury, observing that "where a person has committed a great offence, the exemption of *insanity must be very clearly made out before it is allowed.* That it is not *every kind of idle and frantic humor* of a man, or something *unaccountable in his actions*, which will show him to be such a madman as is to be exempted from punishment." (16 St. Trials by Howell, 764, 765.) The jury found the prisoner guilty.

In the case of Parker, tried by a special commission, 11th February, 1812, for high treason, (the defence insanity,) it was held, that before it could have any weight in rebutting a charge so clearly made out, the jury must be *properly satisfied* that *at the time* when the crime was committed, the prisoner did not really *know right from wrong.* He was convicted. (Collison 477.)

In the case of Rex vs. Bowler for shooting at a person and wounding him, tried at the Old Bailey on the 2d of July, 1812, (the defence insanity,) Mr. Justice Le Blanc, after summing up the evidence, concluded by observing to the jury, that it was for them to determine whether the prisoner, when he committed the offence with which he stood charged, was *capable of distinguishing right from wrong*, or under the influence of any *illusion*, in respect to the prosecutor, which rendered his mind *at the moment* insensible of the nature of the act he was about to commit. He was convicted. (Collison 673.)

In the case of Bellingham for the murder of Mr. Percival, (the defence insanity,) tried at the Old Bailey, May 15, 1812, Mansfield, Chief Justice, stated to the jury, "That in order to support such a defence, *it ought to be proved by the most distinct and unquestionable evidence, that the prisoner was incapable of judging between right and wrong;* that in fact *it must be proved beyond all doubt, that at the time he committed the atrocious act with which he stood charged*, he did not consider that murder was a crime against the laws of God and nature; and that *there was no other proof of insanity* which would excuse murder or any other crime. And that in the species of insanity in which the patient *fancies the existence of injury, and seeks an opportunity of gratifying revenge* by some hostile act, if such a person be capable *in other respects* of distinguishing right from wrong, there would be no excuse for any act of atrocity which he might commit under this description of derangement." (Collison addenda 636.)

In the case of Hadfield, for shooting at the king, tried in the court of King's Bench, in 1800, (defence insanity,) it was proved that he had been a private soldier in a Dragoon Regiment in 1793; received many severe wounds in the battle near Lisle, which caused partial derangement of mind, and he had been dismissed from the army on account of insanity; that since his return to his country he had been actually out of his mind from the beginning of spring to the end of dog-days, and had been under confinement as a lunatic. Acts of insanity were proved on the 11th, and on the morning of the 15th of May, the day the murder was committed. On the part of the crown it was proved that he sat in his place in the theatre nearly three quarters of an hour before the king entered; that at the moment when the audience rose, on his majesty's entering his box, he got up above the rest, and presenting a pistol loaded with slugs, fired at the king's person and then let it drop. And when he fired his situation appeared favorable for taking aim; for he was standing on the second seat from the orchestra in the pit; and he took a deliberate aim by looking down the barrel as a man usually does when taking aim. Lord Kenyon held, that as the prisoner was deranged immediately before the offence was committed, it was improbable he had recovered his senses in the interim; and although, were they to run into nicety, *proof might be demanded* of his insanity *at the precise moment when the act was committed*, yet there being no reason for believing him to have been at that period a rational and accountable being, he ought to be acquitted. (Collison 480.)

Such has been the law for ages, sanctioned by the fifteen judges of England as late as 1843, in answer to questions suggested by the trial of McNaughton, in which they say, "The jury ought in all cases to be told that every man should be considered of sane mind until the contrary were clearly proved in evidence; that before the plea of insanity should be allowed, *undoubted* evidence ought to be adduced, that the accused was of diseased mind, and that at the time he committed the act, he was not conscious of right and wrong. This opinion related to every case in which a party was charged with an illegal act and the plea of insanity was set up. Every person was supposed to know what the law was, and, therefore, nothing could justify a wrong act, except it was clearly proved that the party did not know right from wrong." (Forensic Medicine, by Guy, 332.)

Gentlemen, I have thus alluded to the fixed and settled principles of law incident to all criminal trials upon an issue like this; more fully perhaps, than was necessary for the purposes of this case. If so, my apology is, that my acquaintance with this cause, arising from the trial of the preliminary issue, together with the cause of Wyatt which has just preceded it, in which the same defence was interposed, has instructed me, that these established maxims, which have for ages governed criminal trials in the country from which we have derived our laws, and which have been sanctioned and upheld by our own tribunals, and which have thus far preserved society and

punished crime, are now sought to be overruled; not by learned judges, not by the sages of the legal profession, but by the new light of our learned adversaries, with the help of learned Doctors of Medicine, and speculative Theorists, upon the various and multifarious divisions of insanity. When we shall have proved to you the commission of this crime, and fixed the prisoner as the perpretator, instead of allowing you, as the law directs, to imply that malice prompted it, you will be told by his learned counsel and his body of learned doctors, that no MOTIVE has been proved for the shedding of so much blood, and that in the absence of such proof, you are to regard the horrid deed itself as the strongest evidence that it was the work of a MANIAC.

Such doctrine, gentlemen, has been inculcated in this court by the prisoner's counsel, and, it is fair to presume, will be advanced again upon the present trial. It is proper that I should caution you against the adoption of such heresy to the law. I can in no way better expose the fallacy of such positions, than by quoting the language of a doctor of insanity, which will be used by the prisoner's counsel, and the commentaries of an author upon Medical Jurisprudence. The doctor says: "These acts are without motive. They are in opposition to all human motives. A man murders his wife and children, known to have been tenderly attached to them. A mother destroys her infant." The commentator adds: "It is hereby assumed or implied, that sane men never commit a crime without an apparent motive; and that an insane person never has a motive, or one of a delusive nature only, in the perpetration of a criminal act. If these positions were true, it would be very easy to distinguish a sane from an insane criminal; but the rule wholly fails in practice. In the first place, the *non-discovery* is here taken as a proof of the *non-existence* of a motive, while it is understood that motives may exist for many atrocious criminal acts, without our being able to discover them; a fact proved by the numerous recorded confessions of criminals before execution, in cases where, until these confessions had been made, no motive for the perpetration of the crimes had appeared to the acutest mind. It is clear, that if before inquiring into the perpetration of a murder, the law were to search for motives, and rest the responsibility of an accused party upon the accidental discovery of what ought to be deemed a reasonable motive, many most atrocious criminals would necessarily go unpunished, and some lunatics be executed. Besides, if one accused person is to derive benefit from an apparent absence of motive, there is no reason why the same benefit should not be extended to all who are charged with crimes. In the case of Courvoisier, who was convicted of the murder of Lord William Russell, in June, 1840, it was the reliance upon this fallacious criterion before the secret proofs of guilt accidentally came out, that led many to believe he could not have committed the crime; and the "absence of motive" was urged by his counsel as the strongest proof of the man's innocence. It was ingeniously contended 'that the most trifling action of human life had its spring from some motive or other.' This is undoubtedly true,

but it is not always in the power of a man untainted with crime, to detect and unravel the motives which influence criminals in the perpetration of murder. No reasonable motive was ever discovered for the atrocious murders and mutilations perpetrated by Greenacre and Good. Yet these persons were very properly made responsible for their crimes. On the trial of Francis, for shooting at the Queen, the main ground of defence was, that the prisoner had no motive for the act, and therefore was irresponsible; but he was convicted. It is difficult to comprehend under what circumstances any motive for such an act as this could exist; and therefore the admission of such a defence would have been like laying down the rule, that the evidence of the perpetration of so heinous a crime should in all cases be taken as proof of irresponsibility!

"Crimes have been sometimes committed without any apparent motive by sane individuals, who were at the time perfectly aware of the criminality of their conduct. No mark of insanity or delusion could be discovered about them, and they had nothing to say in their defence. They have been very properly held responsible. On the other hand, lunatics, confined in a lunatic asylum, have been known to be influenced by motives in the perpetration of crimes. Thus they have often murdered their keepers out of revenge for ill treatment which they had experienced at their hands. See the case of the Queen vs. Farmer, York Spring Assizes, 1837. This man was acquitted as insane, while the clear motive for the homicide was revenge and ill feeling." (Taylor's Med. Jurisprudence, 515.)

Thus you see, gentlemen, that this is not the first time that such fallacies have been urged in a court of justice. Yet, notwithstanding their exposure, they are to be here urged again upon you and upon this court—with what effect, your own good sense must ultimately determine. I may add, that if such fallacies shall obtain with jurors, we may bid adieu to all hopes of punishing the atrocious crime of murder, until some new discoveries in science shall enable the learned doctors to enter the murderer's heart or analyze his mind, and discover the influences by which it is operated.

Gentlemen, you are to receive lessons upon the subject of insanity, in the course of this prisoner's defence, which doubtless will appear to you, as they have appeared to us, not only as strange innovations upon the law, but which expose the singular vagaries of the human mind—lessons which, if fully imbibed and thoroughly established, would not only acquit this prisoner of his present crimes, and pardon him for his past offences, but which would open your prison doors to their present inmates, and close them against future culprits. Witnesses, learned witnesses, in behalf of this prisoner, will swear that crime itself, where no motive can be discovered, is an invariable "symptom" of insanity. You will by them, with the aid of the prisoner's counsel, be instructed in the various classifications and divisions that science, upon a careful analysis, has made of mania. You will learn the complicated character of the disease with which this distinguished patient is afflicted, and

the different types it has assumed during his career of crime. You will learn that he was first afflicted with what his scientific witnesses denominate CLEPTOMANIA, a madness that induced stealing, and which, by its strange infatuation, carried him in a regular gradation of crime from the hen-roost to the peddler's cart, and thence to the horse stable, and which could only be relieved by a *prescription* from a court of justice, which for five years reduced his circulation by confinement within the walls of a State Prison.

During this period it will be claimed for him that he underwent a change; not only a physical and mental, but a maniacal change; that while laboring for the State and brooding over his misfortunes, or his faults, he not only received an injury upon his head which affected his brain, but that he contracted a strange "*delusion*," which he brought from the prison, that he was entitled to pay for his five years' services, and hence became a "monomaniac" upon the subject of his pay; that, failing to obtain payment at the office of the prison agent, the *delusion* carried him to justices' offices for warrants to prosecute the person whose property he had stolen, and who caused his imprisonment.

This form of his disease increased with his disappointment, until it armed him with the instruments of death, and led him to the destruction of one of the most respected and beloved families in community. This family slaughter is made the evidence that the prisoner's disease assumed another type, and he became a HOMOCIDAL MONOMANIAC.

Gentlemen, you would naturally here suppose that he had already evinced insanity enough, upon the theory of his counsel, to excuse a dozen culprits. But his apologists will not stop here. Shortly after he was lodged in jail upon the charge contained in the indictment, it was discovered by those who deeply sympathized with the prisoner in his misfortunes, that DEMENTIA, the very last and fatal stage of insanity, the climax and ultimatum of all the varied forms of mania, had commenced its ravages upon his miserable system. Such, gentlemen, is an outline of the theory with which they will attempt to connect the history and crimes of this prisoner. I shall not attempt to detail to you the evidence with which they will attempt to fill up this sketch. It will be sufficient here that I glance hastily at the prominent features of it, and refer briefly to the evidence by which we shall attempt to rebut their ingenious theory, and hold this distinguished culprit responsible for the blood of our esteemed citizens, in which he has so deeply imbrued his hands.

First, they will attempt to show that there was something singular in the change he underwent from the age of seventeen to twenty-two. Gentlemen, you have doubtless been sufficiently close observers of mankind to have learned that the natural vivacity of the *boy* is lost in the more staid and sober habits of the *man*. And when you add to this, the fact that the prison convict is cut off from society and social intercourse, you will naturally infer that he might lose a portion of his social qualities. If, therefore, the pri-

soner underwent a *change* during the period of his five years' confinement, and at a time of life when a change takes place in every mortal, your own good sense, in the absence of all proof, would enable you to determine whether such change was natural or unnatural. But, in addition to this, we shall show you by witnesses who have known him from early boyhood, that *time* has effected no change in him beyond the change that under like circumstances is common to his species.

Again, they will attempt to show you, that while in prison he received an injury upon his head that resulted in deafness, and may have terminated in a disorder of the brain. In answer to this, we shall prove to you that his deafness preceded the blow upon the head; that that blow was called upon himself by disobedience or an insurrectionary movement, and was inflicted in a manner that could have resulted in no essential injury.

The notion he entertained that he was entitled to pay for his services, we have once shown, by a former chaplain of the prison, and shall again if we shall be able to obtain his attendance, instead of being an "*insane delusion*," was a notion somewhat common to the ignorant inmates of that institution.

I have already commented upon the fallacy of attempting to fathom the motives of a criminal for the perpetration of a murder. But we shall prove that the prisoner, when a boy, shortly before he was sentenced to State Prison, resided upon the premises where these murders were committed, and in a log hut a few feet from the dwelling of the deceased; that he was acquainted with the family and must have known them to possess a degree of affluence; that he was at the house about a week previous to the fatal deed; and shall submit it to you to determine whether his object was *plunder*, or whether he took refuge in some *fancied wrong*, and sallied forth with ample preparations to seek revenge upon society. It matters not what may have been his motive, nor whether we discover any; for if, in the language of the law I have read to you, "he had sufficient capacity to form a design and know its consequences," the law holds him responsible for his crimes, and no fancied injury can shield him from its consequences.

Gentlemen of the jury, after the counsel for the prisoner shall have collected all the trifling circumstances from which an inference might be drawn that he has been afflicted with, or predisposed to, any of the forms of mania, men of science, and I doubt not of skill, will be called from the Insane Asylum and other institutions of learning, who have visited and conversed with the prisoner in his cell, and introduced to prove him in a state of absolute and irrecoverable dementia. Gentlemen, I hope I do not undervalue learning, nor would I depreciate in your estimation the value of science, and of skill, and of experience, in determining the true character of any disease that those attainments can discover. But in view of what has transpired in this court, and of what we have every reason to apprehend may again occur upon this trial, I do feel called upon to caution you against receiving the dogmas of men, learned or unlearned, in violation of the plain principles of common

sense. How many patients, think you, are there within the pale of our lunatic asylums, whose insanity was not discovered before their keepers knew them? Insanity, unless occasioned by some sudden injury, is generally if not always preceded by some marked change, altering the habits or conduct of the patient, and which alteration is as readily discovered by a man of ordinary astuteness and sense as by the man of extensive learning, and more likely to be first discovered by the most intimate friends and acquaintances of the diseased. I am willing to concede, that science and skill, with the aid of experience, often trace out the causes of disease, and alleviate the sufferer. But I am unwilling to concede that vast learning is necessary in detecting the mental aberrations of our intimate acquaintances. Who that has ever watched by the side of a friend afflicted with occasional delirium, but has discovered the first wanderings of mind? Think not, gentlemen, that I desire to prejudice your minds against the learned men who will be called in to aid this defence. I am sure that I respect them, and believe that I fully appreciate their merits and their skill. All I desire is, that the LAW shall be upheld; not only the law that defines and affixes a penalty to crime, but the law that governs the testimony of experts. The law allows no witness, skilled in science or in art, to give an opinion, without at the same time requiring him to give the reasons upon which that opinion is founded. Why is this? It is to guard against *empirics*, and to test the value of opinions, by subjecting the facts upon which they are based to the analysis of juror's judgments. Hence I say, gentlemen, should any medical witness give an opinion, which may not be well founded upon the facts from which he derives it, it will become your duty to look carefully at the facts, and determine for yourselves his knowledge, or his empiricism, according to the merits of his opinion. I doubt not that my respect for medical witnesses upon a trial like this, is full as great as that of our adversaries. It is natural that we should all respect most those opinions that concur with ours. I am free to acknowledge, that I have very little regard for that opinion, that science, or that skill, or whatever you may please to call it, which makes a particular crime a "symptom" of a particular mania—or any crime more a "symptom" of insanity than of depravity. In what I have already said, I trust you will have discovered the fallacy of such positions.

We are all aware that in physiology different theories have followed each other in rapid succession; and we know not, from the doctrines of the schools to-day, what they may be to-morrow. And whatever they are now, liable as they are to fluctuate, we cannot be too cautious in incorporating them into the law of the land.

The different conclusions at which witnesses have arrived, and the different opinions they will express with regard to the mental capacity and intellectual soundness of the prisoner, you will ascertain from their testimony, are the results of the different modes of testing it. One thinks that the prisoner supposes he can read, but finding he cannot, makes this inability evidence

of insanity. If all are insane who know less, or who can do less than they had supposed, who could number the crazy? Another, in conversing with him, asks him who God is. He answers, a Being above. He asks further, "What is he like?" He answers, or the "best he could gather from his answer was" that he is "like a man;" and from this dialogue he thinks him crazy or an idiot. If this is a true test, shall we pronounce all who look upward in their addresses to the Deity, and all who believe that "man was created in the image of his Maker," insane? If this learned catechiser, when upon the stand, shall fail to give a better definition of the Deity, we trust you will not pronounce him insane.

Such are some of the tests that have been applied by the prisoner's witnesses to ascertain his sanity, and from such results they call him a fool; while others have thought the best way to test his knowledge, was by observing him in his daily life and different vocations, noting his actions, and his capacity to perform different kinds of labor with success, and by conversing with him upon subjects upon which he may fairly be supposed, from his condition in life and from the manner in which he was raised, to have some knowledge.

In answer to all that may be adduced in the prisoner's behalf, with a view to show that he is a demented being, we shall prove to you that his memory is such that he readily recalls to mind all the occurrences of his life. We shall test the accuracy of his recollection by those who have been familiar with his history. We will prove that he answers readily all questions that he is made to understand, in relation to subjects of which he has acquired any knowledge; that his looks, appearance and actions are, as near as may be in any individual, what they were before he entered the State Prison; that his attitude and the expression of his countenance are the same, and both hereditary; that his health has been, and still is, good; that his appetite is good; that no change is discoverable, either mentally or physically, by those who were best acquainted with him; that his moroseness is natural to him, and, you will observe, is a trait in the natural character of his maternal ancestry; that in the concealment of his instruments of death, he manifested a criminal intent; that in their preparation, and in the execution of his design, he manifested sagacity, judgment, will, and all the common attributes of mind; that in the time he chose for the perpetration of his crime, and in his flight, he sought concealment, and manifested what he subsequently confessed, a consciousness of the wrong he had committed. We will prove by medical men, some of whom have known him from boyhood, that they discover in him no change, uncommon to others, in passing along with the same period of time, and nothing that indicates insanity in any of its forms. And upon such proof, aided by science, and by sense, we shall rely for a conviction of the prisoner.

In opposition to all this, you will be told, by witnesses who have never known him till since the commencement of the present term of this court,

and who have attempted to converse with this unlettered and ignorant negro upon theology, physiology, moral philosophy, and those higher branches that pertain more appropriately to the schools than the cell or the cabin, that, in their judgments, he is in such a state of dementia as to be unconscious of the commission of a crime. They are willing to believe the prisoner honest in all he says, save in the confession that his murderous deeds were wrong.

I have hinted, gentlemen, at the prominent features of the case sufficiently for you to understand and appreciate the evidence to be adduced. I should say no more but for what has fallen from the prisoner's counsel during the progress of empanneling this jury. They have insisted that a fair and impartial trial cannot be had in this county; that the public mind is so enraged at the prisoner's horrid crimes, that the good sense and sober judgment of our citizens are paralyzed. And to illustrate this assumed position, and as if to censure the court and the prosecution, in a reasonable effort to obtain a jury, upon the trial of the simple question of a juror's indifference, they have stepped aside to portray in fancied colors, the excitement of the public upon the arrest of their offending client.

Gentlemen, I am willing to concede that some excitement, yea, even that great excitement did exist. Nor am I certain that I would like a residence in the community, if such an one there is, that would not manifest excitement, even great excitement, when four cold-blooded murders are perpetrated in its very heart! The society that has been robbed in numbers of its brightest ornaments; the neighborhood called to mourn over the lifeless bodies of its most beloved family, with every corse exhibiting the marks of the assassin's knife, that would not be excited, must be bereft of all sympathy, and of the common feelings of humanity.

Yes, gentlemen, the public was excited! Society was convulsed! But that excitement has subsided, and sunk into a quiet grief that still lives, and must long live, to wet with its tears the turf now growing upon the common grave of a venerated mother, a kind husband, an affectionate wife, and a lovely child, whose corses are now mingling with the sepulchral ashes of the dead.

While you are called upon to perform the most solemn duty of your lives, I will not ask you to forget the dead, whose virtues daily call up the tenderest emotions of the living, for I should be asking more than any one who may sit in judgment upon the offender can do. I cannot ask you to forget considerations that are due to society and to humanity. But, gentlemen, if any of you shall have imbibed prejudices against the prisoner, I call on you respectively to eradicate them now. If you have any worse feelings than of pity and compassion for this miserable culprit, and if you have any desire but to arrive at the truth in the investigation of this charge, I call on you, for his sake and for yours, for the sake of justice to him and to yourselves, justice both temporal and eternal, to drive them from your minds.

The people do not seek the blood of the innocent; public justice does not demand it; nor shall you, with the consent of the prosecution, become the instruments of shedding it. No; and notwithstanding the public excitement to which counsel have so often alluded, and which has doubtless existed to a great extent, I am more ready to hope, and more willing to believe, that you will acquit than convict the prisoner, unless his conviction, in view of all the facts, shall be required by impartial justice and the stern demands of law.

Gentlemen, much has been said by the prisoner's counsel, not only on the motion to postpone the trial, but during the investigations to ascertain the indifference of jurors, about the verdict of the jury upon the trial of the preliminary issue. The jury who rendered that verdict, and the court that received it, have both been arraigned by his counsel, and in your presence have received his censure. This, gentlemen, I regret. I can readily overlook, and forget, and forgive all that has been said and hinted against the prosecution. Whatever has fallen from counsel that savored of severity or unkindness, has been regarded as the ebullition of uncommon zeal, warmed into being by a cause of unusual magnitude, and has fallen harmless at our feet. But so far as the integrity of the jury that rendered that verdict, and the impartiality of the court that received it, have been questioned by the counsel, I deeply regret his course. I have referred to the law that governs the court when the plea of insanity is interposed preliminary to a trial upon an indictment. There is no particular manner in which the court is bound to test the question. It is sufficient that the court, in any of the modes prescribed, satisfies itself of the prisoner's present sanity. In this case the mode was taken deemed most advisable by the court, and which was the choice of the prisoner's counsel. The result of that trial, patiently and impartially conducted for two weeks, satisfied the court that the accused was in a suitable condition to be tried for his offence. With that the counsel should have been content. We claim not for that verdict that it should influence you in the one you are to render. We claim for it no merit but that of determining that the prisoner is in a suitable condition to be tried upon the indictment preferred against him.

Gentlemen, I have warned you against the indulgence of prejudice towards the prisoner. I have no fears that any thing counsel may have said has created any against the court or the prosecution.

I have now said all that I deem necessary, upon the introduction of the cause, against the prisoner at the bar. While I have much more upon my brief of what I had noted during the progress of what has here occurred in regard to it, I will save your time by withholding it, and not exhaust the patience you will be required to exercise in the future progress of the trial. And, in conclusion, I have only to add, that when you shall have heard the evidence, the comments of counsel who are to follow the witnesses, and the charge of the court, from whom you are to receive the law, you will render such a verdict as your judgments shall direct, and your consciences approve.

Dr. Joseph T. Pitney was then called and sworn, and on being interrogated by counsel, testified as follows: I am a physician and surgeon, and reside in the village of Auburn. On the night of the twelfth of March I was called to visit the house of John G. Van Nest, in Fleming, about three miles south of this village, where, it was said, murders had been committed by some person then unknown. I arrived there a little after midnight, and found John G. Van Nest, Mrs. Van Nest, and a little boy, said to be their son, lying dead in the house. I also found a man by the name of Van Arsdale there, wounded, and Mrs. Wyckoff, the mother of Mrs. Van Nest, at Mrs. Brooks' near by, also wounded. The body of Van Nest lay upon the kitchen floor, that of his wife, on a bed in the north-west part of the house, and that of the boy on a bed in the dining room. Van Arsdale was lying upon a bed in a room said to have been occupied by Mrs. Wyckoff, wounded, yet living. His wound appeared to have been inflicted with a knife, which had cut the cartilages of the ribs, and entered the left lobe of the lungs, just above the heart. Mrs. Van Nest had also been stabbed in the stomach, in the left side and above the umbilical region. She was enciente at the time. The boy was wounded through the left side of the abdomen. The wound was deep and the intestines badly cut. Van Nest had also been stabbed, and his wounds, as well as those of the other persons, indicated that they had been inflicted with a knife.

After looking at the wounds on the bodies of Van Nest, his wife, and child, I attended to Van Arsdale, whose wound was bleeding profusely. From indications, some two or three quarts of blood had already escaped, and he was very faint. After prescribing for him and dressing his wound, I proceeded to the house where Mrs. Wyckoff was. I found her lying on a bed with a severe wound in the left side, and of the lower part of the abdomen. From this wound some portion of the intestines were protruding. She had not bled much. I examined her, but found no wound in the protruding intestine, but from the symptoms which followed I have no doubt that some of the intestines were wounded. Violent inflammation ensued, and she died on the Saturday following. The affair at Van Nest's occurred on Thursday night. I attended there again on Saturday, when, at request, I made a post mortem examination of John G. Van Nest, by opening his chest. I found an exact correspondence with the external wound, in the right cavity of the heart. The external wound was in the left side of the breast bone, between the fourth and fifth ribs from the top. The wound was from one to one and a half inches in breadth, and from three to four inches in depth. I found no other wound on his body. The wound described was sufficient to have caused his death, and I am fully satisfied that his death resulted from it. Such a wound could not have resulted otherwise. He could not have lived many seconds after having received such a wound, and I doubt whether Van Nest breathed three times after the knife reached his heart. He must have expired instantly. The blade exhibited

may have caused the wound. From the appearance of the wound I should say that it might well have been inflicted with such a knife.

Cross Examination. The direction of the wound was oblique, not perpendicular nor horizontal. I made the examination about two o'clock on Saturday. I was examined before the coroner's jury, called at the time. I did not count the ribs, but should think the wound was between the fourth and fifth ribs, counting downward from the upper one. The wound on the child extended from the left side in front, entirely through his body, and came out on the left side behind, dividing several portions of the intestines. I examined the body of John G. Van Nest immediately after I arrived at the house. He was lying upon the floor near the kitchen door. I do not recollect now how he was dressed in all respects, yet I think he had on linen, a vest and pants, but no coat. I did not examine his pockets then, so as to know whether they contained any thing or had been rifled. There was a hole in his clothing, indicating that the knife had passed through it.

When I made the post mortem examination on the body, I took from his pocket a wallet which contained about nineteen dollars, I think, together with some silver coin. I took from his pocket a watch, also, and handed it, with the wallet, to the coroner. I think the wallet also contained several small papers. They did not appear to have been disturbed. I do not recollect of any other occurrence at the house of Van Nest, that it is important to mention here.

Robert Simpson was next called by the district attorney, and after being sworn, testified: I am a turner and chairmaker, and reside in Auburn, and have a shop near the Auburn and Owasco canal dam. A day or two before the murder of Van Nest, the prisoner came to my shop and wanted me to grind a knife for him. He presented the knife to me. I replied that I had not time to grind it for him, and handed it back to him. He hesitated a moment, and then said he wished I would grind it. I told him I had not time to do it for him, but would put the belt on the wheel so that he could grind it himself. I then set the grind-stone in motion, and he ground it himself. (The district attorney here exhibited a knife, the blade of which had been broken.) The knife produced is the same one that he ground at my shop, as I noticed it there after it had been ground. After grinding he rubbed it upon an oil stone, then laid it down and turned his back to me, put his hand in his pocket, took out three cents and laid them on the work-bench, and went out. I recognize the handle of the knife as one which I turned out for George W. Hyatt, a blacksmith. The next morning, whilst I was standing at my lathe, the prisoner came into my shop and spoke to me, but I did not understand him. He then had a large hickory club in his hand. I think this was on the morning of the murder, or the day before. When he spoke to me I turned round towards him and told him that I didn't understand him. He passed to the work-bench at the opposite side of the shop, took up a brace and bit, and held it up. I nodded assent that he might use

it. He put the club in the vise and went to boring in the end of it. After boring some minutes he turned to do something which I took to be to fit something, which I could not see, into it. When he was using the bit his side was towards me, but when he seemed to be fitting something into the end of the club, his back was towards me, and I could not see what he was fitting into it. When done he took the club and went out. About twenty or thirty minutes afterwards he came back and asked me if I had a larger bit. I went to a tool-chest and got him a larger one, with which he went to boring soon after at the vise. After working there awhile he went out of my shop, and I saw no more of it until after the murders, when it was brought to me. On seeing it then, I recognized the knife.

Cross Examination. My shop is on the Owasco creek, above the village of Auburn, and, perhaps, sixty or one hundred rods from the dwelling of Mary Ann Newark. I had seen the prisoner frequently pass back and forth, but cannot tell how long before the murders. I know him as I know other colored people. I had noticed the peculiarity of his posture in respect to the hanging down of his head. I noticed that at my shop. When he spoke to me, he turned up his eyes but did not raise his head but little, if any. I never saw him doing any kind of work whatever, only standing around or passing by. I never saw him chopping wood. I never saw him in any amusement. I saw him when he came into the shop, but he didn't then speak to me. He asked another person for the man of the shop. Had a knife in his hand which I saw when he came in. When he asked me to grind it he turned the handle towards me. He raised his eyes and came pretty close to me and spoke low. He said, "will you grind my knife?" I took it, saw that it had been ground some, and told him I hadn't time. He then said, "I wish you would grind it." He seemed to hear what I said to him. I told him I had not time to grind it, but would put the belt on and he might grind it himself. I put on the belt and he went to grinding it. Nothing more was said then. He was some time engaged in grinding, probably from one half to three quarters of an hour. When he spoke to me first about it, he wanted it ground edging on both sides. After grinding he used the oil stone, laid down three cents and went out without saying any thing more. When he came in the next morning he advanced towards the lathe where I was at work. I could hear a sound but could not understand him. I did not bow, shake hands with him, or call him by name. When he spoke I turned and told him I didn't understand him. I noticed that he held his head down. He went across the shop and took up a brace and bit, held it up, I nodded assent and he went to using it. I saw no knife that day. He had the club, which he put into the vise, and I cannot say that he had any thing, yet he seemed to have something that he was trying to fit into it, from the motions which he made. He neither paid, nor offered to pay any money that day. From that time, I did not see him again until I saw him in court. John G. Van Nest lived about three miles from my shop. I can-

not tell whether he walked fast or slow; think his gait was ordinary. He did not take off his cap. I observed him closely enough to recognize him, and I have no doubt that the prisoner is the man.

Dr. Samuel Gillmore was next called, and being sworn, testified: I am a physician and surgeon by profession, and reside in Fleming. I assisted Doctor Pitney in the post mortem examination about which he testified. I saw the wound, and but one wound in the body of John G. Van Nest, and that was on the left side, between the third and fourth ribs, I think. It divided the cartilages of the fourth rib. The wound proceeded inward, pierced the pericardium, and entered the right ventricle or cavity of his heart. The depth of the wound was about four inches, and was inflicted with a sharp cutting instrument. The external wound corresponded in size with the blade of the knife now presented by the district attorney. I am satisfied that the wound described, caused the death of Van Nest, and that he must have expired almost instantaneously. When I saw him, he was lying on his back in the kitchen of his house. The locality of the external wound was two or two and a half inches on the left of the navel. The direction of the wound as it was pursued inward, went from the left to the right a little, wounding the mesentery and the liver in the inferior part. We found three or four quarts of blood in the abdomen. It was about ten o'clock when I got there.

Cross Examination. The body of John G. Van Nest was lying from five to seven feet from the steps. He had his pantaloons, vest, and, I should think, his roundabout on. There was a wound in the vest and the shirt, which was bloody, yet the effusion was slight. The body was placed on a table, where we made the examination. A part of his clothes were removed. In the pockets we found a wallet, containing about nineteen dollars in bills, with some small pieces of silver coin, a pen-knife and some keys; also a silver watch. The prisoner was not there on Friday, and on Saturday I was not there. I never saw the prisoner until he had been lodged in the jail.

George W. Hyatt, called and sworn, testified: I am a blacksmith, and manufactured the knife which is now presented me by the district attorney. I sold it to the prisoner on Monday preceding the murders. The young man who worked for me told me that the prisoner, who had come into the shop, wanted a knife. I went to my desk where I kept blades ready made, and showed him four or five knives. He selected one, and enquired the price of it. I told him the price was two and sixpence, or three shillings. He asked me if I could afford it, or would let him have it, for one and sixpence. I told him I couldn't afford it for that. I, however, told him he might have it for that price. There was very little said. He said he wanted a handle put on. I put one on. I think I showed him this handle, and asked if it would answer. He said it would. I then put it on. I think something was said about a ferrule. I told him it wouldn't split without one. He wanted I should grind it. I then went to the grind-stone. He turned the grind-stone and I held the knife. After grinding it I gave him the

knife, but he ground it more for himself. He didn't state how he wanted it ground. I ground it to an edge. It was not ground on the back when I got through. The knife was made of a file. He went away and returned in one or two hours. He first came at nine or ten in the morning; he came before twelve the second time. He had a large jack-knife, with the blade out, and wanted me to put the blade into it. He asked me what I would charge him to put in the rivet. I told him sixpence. He said something about my doing it for three cents. I told him I would make the rivet, and asked him if he couldn't put it in himself, and he said he could. I made the rivet; I might have put it in; he finished it. I might have riveted it some myself. He paid me a sixpence and I gave him three cents back. He then went away. I noticed that he was hard of hearing. I was told that he was in the first place, and I discovered it in talking with him. I saw him in the street afterwards. I had to talk quite loud in order to make him hear. I had to use considerable exertion of voice. I had to hold my head close to him. I spoke louder than Mr. Sherwood does now to make him hear. I don't recollect what kind of coat he had on; don't recollect whether he had whiskers on or not. The first time, he was in the shop about half an hour; about the same length of time the second time he came. I saw him in jail three or four weeks after he was put in. I asked him if he knew me, but he made no answer. I beckoned to him. He leaned forward and said he couldn't hear; he was deaf. When I asked if he knew me I spoke louder than I did at the shop. When he leaned forward he was three or four feet from me. I spoke the second time about as loud as I could; he made the same reply. I have related all the conversation I recollect at the shop. He gave me two shillings and I gave him sixpence back.

Cross Examination.—I have lived in Auburn since November last. I never saw Freeman until he came to my shop. Never heard of him. I work in the back part of the shop. I was informed by David Harnden that Freeman wanted a knife. I call the knife a butcher knife. Don't know as I saw Freeman come in at the door. Don't recollect of his speaking to Harnden. Freeman came up to me. He did not call me by name. I showed the knives before he spoke to me. He carried his head rather down, as it is in court here. When I spoke he inclined his ear to me to hear. He seemed to work at the riveting as though he had some experience. I had been told by Mr. Doud that he worked at the blacksmith's trade in prison. I didn't notice how he did his work. Have thought of the ferrule since I swore here before. Can't recollect particularly what was said about it. Was pretty close to him when I talked to him; within a foot some of the time. Think I saw him have more change than he paid me. Saw no bills. He had nothing with him when he came. I think he went off with the knife in his open hand. Doud said Freeman had been in the shop a number of times to hire out. The knife was a large jack-knife, with one blade. I think he put it in his pocket. Should think it was rather dull. Can't say whether

he talked with Harnden. He took the sixpence from his pocket. I saw no more money then. Am not certain where he put the jack-knife. He made no salutation when he went out. In the jail he was chained in the back part of the cell, when I saw him. He leaned forward as if trying to come to me. He gave me no salutation. He said, I can't hear; or, I am deaf. His head was downcast, then. I thought his appearance was different in jail from what it was before. There seemed to be no inclination, on his part, to notice any one. He had his eye in one direction. When he stepped back, he didn't look at me. At one time, I think, he came within four feet of me. When I spoke loud at the shop, he heard me. In the jail, his hand was in a sling. He held his head and eyes down, in jail. He carried his head about the same in the shop. I have no recollection of his looking up. It is my impression he turned his eyes up, without raising his head. I have no doubt this is the man that bought the knife of me.

Joseph Morris, called and sworn, testified: I reside on Seminary avenue, in Auburn. I am a blacksmith. Have seen the prisoner. Saw him first at my shop, about a week before the murder. He came in there on Thursday, and asked me if I would make him a knife. I asked what kind of a knife. He picked up a piece of iron and scribed out what he wanted. I supposed he wanted a knife to stick hogs, sharp on both edges. I asked him if he wanted a knife to stick hogs; he said that was not the kind. I told him he had better whittle out a pattern of the knife he wanted. I looked for a bit of soft wood. I told him to go to the carpenter's and get a piece. He said he would go and whittle out a pattern. He went, and was gone fifteen or twenty minutes, and returned with one. The stick produced is the pattern he brought. He asked what I should charge him to make such a knife. I first asked him what kind of steel he wanted it made of. He asked what I would charge to make it out of good cast steel? I told him four shillings. He said I could afford to make it for two shillings. I told him I could not. He staid about an hour. He finally said he would give four shillings, if I would grind it and put a handle to it. I told him I wouldn't do it. He staid some time. Went off and left the pattern there. I said to him, "What do you want to do with the knife?" He said nothing. I said, "You want to kill somebody, don't you?" He said, "It is none of your business, so long as you get your pay for it." That is about all the conversation. The conversation was all had at the same time. He came back to my shop the next Saturday. I had no conversation with him. I don't think he talked to my boys then.

Cross Examination.—I have lived in Auburn sixteen or seventeen years. Don't recollect ever seeing him before. My boys told me he used to live with Mr. Cadwell; but when that was said, it didn't call him to my recollection. He had on a roundabout when I saw him. He kept his head about as he does now—down. He cast his eye up. He carried his head about as he did in the streets. I saw him in the streets before, but didn't

know his name. I saw him a short time before he came to my shop. He carried his head down more than persons ordinarily do. I don't recollect as he held his head close to me. One of my boys told me he was deaf, and I must speak loud to him. I talked louder to him than ordinarily. I scribed out a sticking knife. He said that was not the kind he wanted. I asked if he wanted a knife to stick hogs. He replied, No. When he went away he handed me the pattern. I laid it up on the forge. It was taken away the day after the murder. I asked if he wanted it made of good cast steel. He said, Yes. I said to Thomas, "I guess this negro is going to kill somebody." There was no other conversation while he was in the shop. He said he would give me four shillings to make and grind the knife. I told him it would be more trouble to grind it than to forge it. He didn't call me by name. I had no conversation with him the second time. I asked Smith who the negro was. He said he didn't know. My shop is near Genesee street. The street on which my shop is runs up to the Theological Seminary. I think likely I spoke to Smith about his fetching the pattern to me. I don't recollect the words. I have thought a good deal about seeing the negro about there.

JOSEPH W. QUINCY called and sworn, testified: I live on Genesee street. Am a barber. Am partially acquainted with Freeman. I saw him the same week of the murder. He came to my shop and wanted his whiskers shaved off. I told him I didn't shave colored people. He had a Webster coat on, of a brownish color, and a cap. It was between eight and nine in the evening.

CROSS EXAMINATION.—I knew him in November last. Saw him in the street. I asked one of my men who he was. I saw him almost every day passing by my shop. I have seen him sawing wood. I never talked with him except that time in the shop. He was in my shop about two weeks before. I met him coming out as I went into the shop. He didn't speak. He had a stooping, downcast look. He carried his head down. That made me observe him. He didn't appear to notice me when I told him I couldn't shave him, until I spoke quite loud. He stood in the middle of the floor and asked me to shave him. When I told him the second time I couldn't shave him, he turned and went out of the shop. I saw him in the jail and spoke to him. He didn't appear to hear me. I didn't go into his cell. He was standing in the back part of it, and appeared then as he looks now—his head bent forward and down, as usual. He didn't speak to me when I came up. I asked him if he knew me. He made no reply. I spoke twice, and louder the last time, but he said nothing. He looked up. Since then, I have not seen him, only in court. He was not in my shop more than three minutes. He had a little hair under his chin, and hair on his upper lip. I should think he could have heard in the same tone of voice I spoke in at the shop.

PETER W. WILLIAMSON, called and sworn, testified: I resided in Fleming at the time of the murders spoken of; a mile and a quarter, or half, from

Van Nest's. I spent the evening at Van Nest's the night of the murder. Van Nest, his wife, three children, Mrs. Wyckoff, Helen Holmes, and Van Arsdale, constituted the family. They were not all at home when I first went there. I went there about five o'clock in the evening. Mrs. Van Nest and Mrs. Wyckoff were not there; they came in about six o'clock. I remained until near half past nine. Mrs. Wyckoff and the children, and Miss Holmes, had retired before I left. Mrs. Van Nest left the room a few moments before I did, and went out into the back kitchen. We sat in the sitting room. I went out the front door of the sitting room to the road. Van Nest and Van Arsdale were in the sitting room when I left. When I had got about one hundred rods from the house, I heard the dog bark very fierce two or three times; then I heard some one halloo, or shriek. I then went ten or fifteen rods further, and supposed I heard some four or five voices shrieking. When I had got within about half a mile of home and three quarters of a mile from Van Nest's, a few rods east of the church, I heard some one coming behind me on a horse. As he passed me, his left leg brushed my right arm. He then turned his head to the left and looked me in the face. Then I looked him in the face, in return. I supposed him to be either a negro or a man disguised as a negro. He had no saddle on the horse. All that I discovered he had to guide the horse with, was a halter. After he passed me a few rods, he put the horse on a fast trot, when I discovered whose horse it was. At the moment he passed me, a cloud obscured the moon. The horse was Mrs. Wyckoff's. I saw him when he turned the corner at McFarland's. The horse went by the road. He came back, and took the road to Auburn. I had to come about half a mile from McFarland's. I saw him about half way from McFarland's to my father's. He went about a rod past the turn of the road. I went home and told father what I had seen. I got my horse, and started back to Van Nest's. I run my horse until I got within about fifty rods of the house, when I saw a light at the front gate. Just before I got to the gate, a gentleman raised a light above his head, and pointed a gun towards me. The gentleman was Montgomery Turnier, who recognized me, or the horse, before I did him, and wanted to know how I heard the news so soon. I told him I had heard no news—suspicion drove me there. I went into the house, and saw Van Nest lying in the back kitchen. He was lying on his face, with his right arm over his head. His left hand, I took it, was in his pantaloons pocket—it seemed to be there. His right foot was lying on the second step; he was dead. I went into the sitting room. Van Arsdale was sitting in a chair, wounded, and it was with some considerable difficulty that he could breathe. I found Mrs. Van Nest on the bed in the bed room, in the north-west corner. She was dead. The child was on the bed in the sitting room, and was living. I started to alarm the neighbors. I was gone about half an hour, and I went home before I returned. I found Mr. Turnier, Mr. James Easton, his two sons, Edmund and James, Adam Ocobock, and William Brooks there when

I came back. I was gone to alarm the neighbors about two hours. Van Nest's body was not moved while I was gone. I alarmed Mr. Waring, Mr. Cox, and others. I met the horse between my father's and John Fries'. Harrison Masten had the horse; Jesse Cox and Brooks were with him. He was muddy on the left side. It must have been about two o'clock when I met the horse. I looked at my watch after I heard the dog bark. It was precisely half past nine. I didn't notice the mud on the horse until Masten spoke of it. I then saw he was muddy. The mud extended to his hip and shoulder. I noticed he had a halter on. I saw no blood. I saw a place, about twenty rods south of the four corners, where the horse had been down. I should think he had fallen there. There was snow by the sides of the road, but it was pretty much gone in the road. It was over a foot deep on the sides of it. When the prisoner passed me, I saw what I supposed to be a club in his hand—a stick with the bark pealed off, or newly shaved. He carried it in his left hand. I saw two feet of it below his hand. I didn't notice it above his hand. The horse was a black horse, with a white stripe in his face—was old, and possessed not much power of fleetness. The negro had a Webster coat on when he passed me. I could not tell the color of it; not black, nor lighter than those dark sheep's gray. He had a cap on, or a low crowned hat. I supposed it to be a cap. Did not see Freeman when he was brought back from Schroeppel.

Cross Examination.—Q. How did you know the place you speak of was a place where the horse had fallen?

A. From the looks of the marks in the snow and mud. Mr. Van Nest's horses were better and more valuable than the one he took. Mrs. Wyckoff was a woman of considerable property. No search was made to ascertain if money or property of her's had been taken. Mr. Turnier lives about a quarter of a mile from there, with Mrs. Brooks. Two of the other horses were in the stable. Did not go to Mrs. Brooks' that night.

William H. Brooks, called and sworn, testified: I live about half a mile south of the house of John G. Van Nest. I was there on the evening of the murders, between nine and ten o'clock, and after Mrs. Wyckoff came to our house. I was in bed when she came there. She had on a night gown, an old pair of stockings, but no shoes. I didn't see her knife, yet I saw a butcher knife at our house with her name on it. I went immediately down to Van Nest's house, but not before Helen Holmes reached our's. Easton, Winslow, Ocobock and, afterwards, Turnier went down there. Julia, and the one on the bed, George W., that was stabbed, were there. He was alive when I left to come to Auburn for the doctor. As I was coming to Auburn, I saw Mrs. Wyckoff's horse lying down a little south of the corners beyond New Guinea. I got Doctor Pitney to go up, who went up before me. Harrison Masten took the horse back. The horse was muddy and had got up; his shoulders and side were muddy. I saw blood on the halter, but not on the horse. Next day I saw blood on the manger where the horse was taken

from. Two or three days afterward, I noticed that the horse was stabbed just back of the fore shoulder. When I got back, the body of Mr. Van Nest had been moved.

Cross Examination.—I am fourteen years of age. I was asleep when Mrs. Wyckoff came in, and they waked me up. Mrs. Wyckoff complained of being stabbed. She had on a night dress. I went to Mr. Van Nest's on foot. Mr. Turnier, Easton, and Ocobock were in the road coming to Van Nest's, when I went out. After coming to our house, Mrs. Wyckoff went immediately to bed. I did not notice the clock to see the time then. I didn't see Mr. Van Nest's rifle there that night. Forget how Miss Holmes was dressed. Julia was in her night clothes, and Peter was asleep. Julia is the oldest. I did not remain there long before I came for the doctor. Some one got the horse for me to ride. Mrs. Wyckoff said to us that they were all stabbed down at their house—that she was stabbed also.

Harrison Masten, called and sworn, testified: I came down to Auburn after the doctor, and found the horse near New Guinea. I took the horse back. He was muddy on the left side. When I returned, I took the horse back. He was muddy on the left side, and appeared to have fallen at the sluice-way. I saw no blood upon him, only on the halter. He was put in the stable. I saw Freeman when he was brought back in the covered carriage. The horse had fallen into the sluice-way, from the appearance of things.

Cross Examination.—I live a little over three quarters of a mile from Van Nest's place. It was half past ten when I was called. When I got there a number of persons were in the house. Van Nest was lying in the kitchen, on his back. He had on a loose linen roundabout and a vest. I staid there about fifteen minutes. I did not see Van Nest's rifle that night. I saw Freeman the Saturday when he was taken up there to the house. I was within thirty feet of him. Didn't hear him speak. He rolled up the white of his eyes at me and smiled. He knew me. I judged that he did not hear. They were then bringing him to the jail. There were a great many persons back of him, and some ahead of him. I heard no swearing or hallooing after him.

William B. Patten, called and sworn, testified: I reside in Auburn. I know the prisoner, and have known him during the last winter before the murder. I saw him at the Seminary sawing wood, and saw him at the market. The night of the murder I came past Van Nest's house, a little after nine o'clock. I met Freeman south of the house, rather more than half way to Brooks' house. I was in a cutter, but he was on foot. He had something under his coat, and on his arm, which I supposed was a gun. I saw it sticking down by the side of his left leg. He was directly in front of me at first, and then he sheared off to the left side, leaving his left side to me. He had on a Webster coat of a mixed color, as I took it. He turned out to the side of the road. He kept his eye straight ahead. He had a cap on. The color

of the gun, or whatever it was, was of a dark color. It was a moon-light night. His coat was buttoned up, and his gun or club was under it. I didn't notice any thing like a blade. He carried his hand by his left side, around his coat. As I passed Van Nest's house I noticed a light there, and I saw persons moving by the window.

CROSS EXAMINATION.—The day spoken of I had been to Venice, and was returning home. There was a light at Brooks' house also, when I passed it, but I saw no persons there. I met the prisoner just opposite the corner of the woods, where the road is quite narrow. I couldn't distinctly say it was a gun that he had, but I thought so then. I noticed it particularly before he came up to me, and I was a little startled at it. I drove on a trot after I got to the Sand Beach. I heard of the murder the next morning. I have no recollection of Freeman when he was a boy. I saw him at the market in the winter. I never spoke to him. I knew his father, mother, uncle Sidney, &c. Sidney is universally admitted to have been crazy for many years. I saw Freeman at the Seminary sawing wood. There was no person in the wood shed with him. I saw him in the market only once. I didn't enquire his name. Don't know as I ever heard his name prior to the murders. I don't remember any thing about his history or manners before he went to prison. I went to Van Nest's house the day of the inquest. His body was then lying in the kitchen, near the west door. He was laid out as a corpse. I have no doubt Freeman is the man I met that night as I was coming from Venice.

NATHANIEL HERSEY, called and sworn, testified: I knew Freeman last winter. He made it his home at John De Puy's. He boarded a while at Mary Ann Newark's. He had butcher knives to my knowledge before the murder. I saw him at New Guinea. I lived then with my mother. He had the knives at Mrs. Newark's. He didn't tell me what he was going to do with them. He brought them out and gave me the new one which he bought in town. I showed it to Mr. Worden, the man I worked for. That knife is now at Waterloo. It was a straight knife, turned up at the point. He also had a couple of old knives, about a week before the murder. I saw him once at Gale's grocery. I didn't see him have any straight knife. The one he gave me was done up in a piece of paper. He said, at Gale's grocery, that he meant to kill John De Puy, because he went around and told them not to let him have liquor. John De Puy was at Gale's the night he said so. I don't know whether Gale had refused to let him have liquor that night or not. Freeman said he had found the folks that put him in prison, and he meant to kill them, because they put him in prison. He said they were Van Nests. He said John De Puy turned him out doors when he worked at Port Byron, because he would not give him his money. This was a week before the murder.

CROSS EXAMINATION.—I am twenty-three years old. My mother's right name is Miss Hersey. She goes by the name of Willard. Jack Willard,

her husband, is in prison. I can't tell how long she has lived here. I saw wood and do any thing I can get to do for a living. I was put in jail once, for fighting. I never was in State Prison except to visit it. I knew Freeman when he worked for Dr. Hamilton; that was about seven years ago. He was a lively, smart boy; he laughed and played, and was good natured. I thought he could understand as much as any body. He heard well and could tell a story right off. He didn't talk a great deal unless some one spoke to him, or he was playing, but then he talked like other folks. I saw him last fall; he held his head down as he walked along. He knew me, and wanted to know how I did. He said he was glad to see me. His hearing was pretty hard then; I had to speak pretty loud to him. He also appeared to be quite stupid. I asked him what ailed him. He said he was deaf; that they rapped him on the head at the prison. I saw him again in about three weeks. He had the same appearance then. I saw the knives after I had the talk at Gale's. He said he had found the folks who put him in prison. He said he had found Van Nest's folks; and I asked him who they were. He laughed about it. He said he was going to kill Mr. Van Nest's folks. He said nothing about a man or woman, or a widow, that I remember. This was all that was said at that time. I think Esq. Bostwick asked me, on the examination of this case, whether I had heard Freeman threaten Van Nest, and I said I didn't hear him threaten him. That was about a week after the murder. I believe I was under oath then, but am not sure.

Re-Examination.—I told Mr. Stephen Titus, the same night, that Freeman said he was going to kill John De Puy, and he said he was going to kill Van Nest. On the examination Esq. Bostwick said he wanted me to tell what I knew about it and not injure myself. I then told him what I recollected. I didn't think of this, and another thing I forgot all about. He asked me about his threatening to kill, and told me to tell all I knew about his killing the folks, and he asked me if I knew any thing about his threatening to kill Van Nest. I told him I believed he didn't mention any thing about it. I didn't think of it then. I was not arrested, but John Gabriel, my brother-in-law, was taken up, and I was examined as to Gabriel, but I didn't know as I was examined as to Freeman. He said he meant to kill John De Puy because he went round and told them not to let him have any liquor, and because he took his money away when he went to Port Byron, and turned him out of doors. He said he had found Van Nest. I asked him who, and he said Mr. Van Nest's folks, in reply. He said he meant to kill them because they put him into prison.

Thomas F. Munroe, called and sworn, testified: I am a police officer. I was at Van Nest's house the night of the murder. The body of John G. Van Nest was lying in the back kitchen with one foot on the step. His hand was under him, but not in his pocket. I assisted in taking his coat off from him. We laid two pillows on the floor and put the body on them. I observed the hole cut in his breast. I saw the prisoner in jail the Sunday

following. I don't recollect the clothes which he had on so as to describe them particularly. I think the knife in court is the knife which I saw there. The point of the blade broken off is five inches long by measurement. The balance of the blade is three and a half inches long.

CROSS EXAMINATION.—I arrived at the house about half past twelve o'clock Friday morning. Doctor Pitney had not got there; but Mr. Easton and Mr. Winslow were there. I saw a gun hanging in the kitchen in the passage. A man standing up where Van Nest's head was, I think could reach the gun. Mr. Van Nest had on gray pantaloons. His vest was buttoned, but his roundabout was not. Mrs. Van Nest was in the north-west bed room. A blanket had been laid over her. I only saw her head and feet. She had shoes on. I saw the horse which Masten was taking back to the barn, said to be Mrs. Wyckoff's, but did not examine him. I made some effort to find the prisoner, and to get others to aid in the search for him. I knew Freeman when a boy. In his youth he was quick and active, and not much different from other black boys.

DANIEL M. TURNIER, called and sworn, testified: I reside over a quarter of a mile south of Van Nest's. I got there a little past ten o'clock. I was at Mrs. Brooks' and let the widow Wyckoff in when she came there. The lights were not extinguished. She had on her night clothes, and was in her stocking feet. She had a butcher knife in her hand. When she came I was in the wood shed. I first heard a noise at the gate, and then heard her say, "this way, quick, for God's sake." I picked up my lamp and went through the house, and told my wife there was some one out door in trouble. She took the light from me and I went to the front door. She was on the stoop. I asked who she was; she told me and said they were all murdered down there. I asked how many there were. She said she saw two and thought there were half a dozen men there. She seemed to be very much frightened, and said she was wounded. I didn't see any wound myself, but she remained there until Saturday morning, when she died. As she came in I took the knife from her, and I went to Winslow's to get assistance, and then went down with Mr. Winslow, Edward Easton, Adam Ocobock, and William Brooks, to Van Nest's house. We found Van Arsdale sitting in a chair. Van Nest was on the floor in the back kitchen, dead. Mrs. Van Nest was in the bed room, dead. The child had been stabbed but was alive. I saw Williamson when he came there. I had a lantern and a gun which I took down with me. I had the gun in my right hand, but don't know as I held it up. As he came up I asked him how he heard of it so soon. He said suspicion brought him there.

CROSS EXAMINATION.—Mrs. Wyckoff had on a flannel night gown when she came, and had socks on. I carried her into Mrs. Brooks' room and went off. When I got to Van Nest's, I found Ocobock, Brooks, and Easton there. I saw a gun hanging up in the kitchen, nearly over Mr. Van Nest's head.

I examined to see if he was alive. I put my hand under his side to see if his heart beat. Van Arsdale was in the sitting room on a chair.

HELEN HOLMES, called and sworn, testified: I lived at John G. Van Nest's at the time of the murders. Mr. Williamson was there that evening. I retired before he left. I slept in the north-west bed room. Julia Van Nest slept with me. Mrs. Wyckoff had retired. She slept in the north front room, and Peter slept with her. The bed was in the south-west corner. Mr. Van Nest, Mrs. Van Nest, and George slept in the sitting room; Van Arsdale up stairs. The first knowledge I had of the assassination was the shriek of Mrs. Van Nest in the yard. I had not then been asleep. I then heard the dog bark. I raised the window and asked what the matter was. She came to the window and said she was stabbed, and they were all going to be killed. I then left the window, ran to the front door, unlocked it and let her in. She went directly into my bed room and reclined on the bed. I re-fastened the door, and staid in the bed room about a minute. I then went into the north front room. Mrs. Wyckoff got up and went out into the hall. Soon after that I heard a noise, indicating scuffling there. It continued but a short time, and I went out soon after it subsided. I heard a noise up stairs, also, before I went out. The noise in the hall occurred before that up stairs. I don't know whether Mrs. Wyckoff had a knife when she went into the hall or not. She had a butcher knife, and generally kept it in a cup board in her room, and I saw it when I got up to Mrs. Brooks' house, after the murders.

When I went out I passed through the sitting room into the kitchen. I saw Mr. Van Nest lying on his face upon the floor, with one foot on the steps leading to the kitchen. He was dead. There was no light in the sitting room then, but there was in the kitchen, where Van Arsdale was. I found the back kitchen door open and fastened it, and then went back to the sitting room, leaving the light in the kitchen. As I came into the sitting room I saw a negro looking through the front window. I went to the hall door, leading from the hall to the sitting room, which was open. Van Arsdale then spoke to me and told me not to stand before the window. He was then in the sitting room, near the kitchen door. The negro then went to the window on the north side of the door. I remained where I was. He remained at the window but a short time looking in, when he stepped to the edge of the stoop and looked down north. I then saw his face distinctly. He then stepped up to the door and kicked it open; then went to the north end of the house and looked into the north window. He looked into the north window long enough to look around the room. I saw his face then, but not as distinctly as when he was on the stoop. I could see, however, that he was a negro.

I saw him again when he was brought to the house on Saturday, and I have seen him in court since. The prisoner is the person. After looking into the north window, he returned to the front side of the house and went

down to the gate. I observed in his hand what I thought was a gun, but don't remember in which hand he carried it. He went north until he got near the barn yard gate, and I saw no more of him that night. I then went to Mrs. Brooks' house. I think Van Arsdale was standing up when I left. The child was living; it groaned but didn't make much noise. I went to Mrs. Brooks' quickly, and run part of the way. I got there before the men came to Mr. Van Nest's. Mrs. Wyckoff was there and was wounded in the abdomen, and one of her fingers was cut. She was sitting up. I didn't observe that she was wounded any where else. I returned to Van Nest's house again, betwen ten and eleven o'clock that night. Mrs. Brooks' went down with me.

About a week before this affair, I saw the same negro at Van Nest's house, It was on Monday of the week previous. He came in through the barn yard, and back door yard, into the back kitchen. He knocked at the sitting room door. I let him in. That is the door where Van Nest lay dead. He asked Van Nest if he wanted to hire a man to work. I believe he said, "Do you want to hire a man?" Mr. Van Nest replied that he did not; that he had a man engaged, and asked the prisoner if he lived in Auburn. The prisoner said he was staying around there, and had no work. Mr. Van Nest told him perhaps he could get work further up the lake. To this the prisoner made no reply. Nothing more was said. He remained there not over five minutes. He was hard of hearing, and said he was deaf. When Van Nest spoke to him, he held his head down and said he must speak louder for he was deaf. He went out of the house the same way he came in, and went north. Mrs. Wyckoff was a lady of wealth, and was in the habit of loaning money. Mr. Van Nest was, also, in good circumstances. The two youngest children were in the room when the prisoner came there for work, but Van Arsdale was not there. He came there to stay on Thursday night. Mrs. Van Nest was alive when I left the bed room, but was dead when I returned from Mrs. Brooks' house.

Cross Examination.—Mrs. Wyckoff was an aunt to my mother. I went there to live about seven years ago, when my uncle, Peter Wyckoff, was alive. I don't know the widow Godfrey. I saw her in court when she was here, but never saw her before. I know of no relationship existing between the Wyckoff or Van Nest families, and Mrs. Godfrey. I knew nothing about a horse being stolen from Mrs. Godfrey, until after the murder. I know nothing of Mrs. Wyckoff or Van Nest's making any complaint against the prisoner for stealing a horse. Van Nest was a justice of the peace. He was supervisor of Fleming. I knew nothing of Van Nest or Wyckoff having had a horse stolen in 1840; nothing of any of the family having been a witness against Freeman. Mrs. Wyckoff had considerable property, and kept her money and papers in the north front room, in a desk. She had forty dollars at that time, which was brought in the Saturday night before the

murder. Mr. Van Nest kept his papers and money in a desk in the back room. The family had respectable clothing, and respectable furniture.

The prisoner, when he came to get work, had on a cap, and the same Webster coat he had when arrested. He did not call any one by name; nor did any one call him by name. He stepped towards the stove; I handed him a chair and he sat down. His head hung down, but he turned his eyes up. He sat near Van Nest. He asked Van Nest if he wanted to hire a man. Van Nest immediately replied to him. He didn't hear, and told Van Nest he must talk louder; and leaned forward; he asked no more questions. Van Nest told him he had hired a man; that perhaps he might get work further up the lake. When he heard this he went off. I had money, and kept it up stairs. No money or clothing were missed; nothing but the halter and horse.

I went to my room about half past nine o'clock, and before Williamson had left the house. I left Van Nest and Williamson in the sitting room. He had on gray pantaloons, a vest, and a roundabout not buttoned. I heard Mrs. Van Nest shriek when I had been to bed but a short time; when I had been in my room perhaps five minutes. Mrs. Wyckoff had retired previously. I think it was not over five minutes from the time I heard Mrs. Van Nest shriek, and the dog bark, until the negro went away. It all occurred in a very short period of time. He saw no money when he was at the house to get work. I knew the night of the murder that he was the same negro who came there for work. I saw no knife in his hand, but I saw what I thought was a gun. On Saturday following the murder I saw him. The officers brought him to the house. He had on the same dress he had when he came to get work. He was there ten minutes on Saturday, while I was there. I didn't hear him speak. His head was down, and he looked up as he does now. He didn't smile. He was standing up a part of the time, with his head down in the same way. I saw him in jail the second day of court; he was standing up. I didn't go into the cell. His head was down the same as now; didn't speak.

Re-Examination.—Mrs. Wyckoff had no wound on her temple. I saw nothing indicating that the prisoner was crazy. I heard no words when the scuffle took place in the hall. Mrs. Wyckoff said nothing.

Cornelius Van Arsdale, called and sworn, testified: I was at Van Nest's the day of the murder. Williamson was there that evening, but he left before I retired. I retired soon after he went away. After I had been in bed four or five minutes I heard a woman shriek. I raised up in bed and looked out of the window; saw no one, and laid down again. The shriek appeared to be out of doors. In about a minute after that, I heard Mr. Van Nest ask some one what he wanted. I think he said, "What do you want here in the house?" I next heard something fall heavy on the floor. I then got up and put on my pantaloons; but while putting them, or my

stockings, on, I heard the door open. Some one spoke, and asked if there was a man up there. I was then stooping over putting on my stockings. I rose up and said there was. I then beheld a negro, with a butcher knife in his hand, like the one here, coming up the stairs. As he came up, he stabbed me in the breast, but the knife glanced off on the left side of the breast bone. As he stabbed me I pushed him back, and he fell down stairs. He had a candlestick in his left hand, which I wrested from him, and with which I struck him. I then followed him down, and at the bottom of the stairs I found a broom stick, which I seized, and with which I struck him two or three times. He made a quick retreat as I followed him up. He went out of the front door of the sitting room, and I closed the door. The front hall door was open. As I looked out, I saw the negro about half way from the house to the gate. Mrs. Wyckoff, at this time, was on the last step of the hall door steps. I said to her that she had better come in to the house, but she went on towards the gate; and at or near the gate, she came up to the negro, and there they had a short scuffle. I saw her strike at him, but saw nothing in her hand. He had hold of one of her arms with his hand, and she appeared to be striking at his wrist. They were there half a minute, perhaps, and then she went south and he went north. I closed the door when she went through the gate, but I think I didn't fasten it. I then went to the door leading to the kitchen. Miss Holmes came in, and said the negro was looking through the window. I told her to step one side, so that he couldn't see her. I sat down on the floor, behind the stove. He was then looking in at the south front window. I saw in his hand what I then supposed to be a gun. He held it in his left hand. Couldn't tell whether it was a gun or a club, but took it to be a gun. He then kicked the door open, and went to and looked in at the north window. After he kicked the door open, I got up, and started to go into the kitchen, when Helen said he had gone north. I then saw Van Nest on the floor, dead, as I supposed. I took hold of Van Nest and turned him partly on his side, but he rolled back on his face. Helen then asked if she should go and alarm some of the neighbors. I told her to do so. I remained in the sitting room most of the time whilst Helen was gone; but was in the north room, bed room, kitchen, and upstairs, some of the time. When I went into the north-west bed room, Mrs. Van Nest was alive, but she was speechless. She died before I left the room. I carried the child from the sitting room to the bed room, where its mother was. I didn't know then whether she was hurt or not. Its mother breathed twice after I took it in. I then took the child back to the sitting room and gave it to Julia, who carried it across the room once or twice and then put it on a chair. I saw that its bowels protruded, and I put it on the bed. I then sat down in the chair a few minutes—then went into the kitchen—then came back, and went up stairs and put on my boots. My wound was bleeding profusely.

From the time I went to bed until Helen started to go to Brooks', was

from ten to fifteen minutes. Mrs. Van Nest went into the back kitchen before I retired; and when I retired, Mr. Van Nest was standing by the stove. The prisoner is the negro who stabbed me. I saw him again on the Saturday following the murders. I recognized him as the man. He was brought to the house to be identified. The bodies were not then removed.

Cross Examination.—I was not related to Mr. or Mrs. Van Nest. I had been absent from that neighborhood five or six years. Had known them twenty years or more. I am a half brother of Van Arsdale who married a sister of Mrs. Van Nest's. Don't know Mrs. Godfrey. Never heard of her before the murder. There is no relationship between her and the Van Nest, Wyckoff, or O'Hara families. Van Nest was generally at home, unless he had business away. He was a domestic, sedate, and grave man. I had never heard of Freeman before the day the murder was committed; but Van Nest had said to me, that a negro man was there on Monday of the week before, and wanted work; but I don't recollect as he told me any thing he said. He said the negro was deaf. He didn't call his name, or say he knew him. Van Nest said he didn't know who the negro was. I don't know as there was any money in the house. I supposed there was a little, as Van Nest was a man of property.

The night of the murder, I went to bed about twenty-five minutes past nine. Mrs. Van Nest had gone out. She might have been out about five minutes, when I went up to bed. Van Nest had on gray pantaloons, dark vest, and a light roundabout. He generally had his wallet in his pocket. Mrs. Wyckoff's money was found in a small trunk in the closet, not locked. About five minutes elapsed from the outcry before he kicked the door open. He inflicted all the wounds in about five minutes. I heard no reply when Mr. Van Nest asked, "what do you want?" but in half a minute I heard a fall. Mr. Van Nest had three horses, and Mrs. Wyckoff had one, which was twenty or thirty years old, and worth little except for his shoes and hide. One of Van Nest's horses in the stable with Mrs. Wyckoff's horse, sold for ninety dollars. When the negro was brought to Van Nest's house, after the murder, he was tied. He sat down. He didn't speak. He stood still—was chained—his head down, and he rolled up his eyes, as he does now. My bed was at the head of the stairs. When he looked in at the window, I don't know as the negro saw Miss Holmes or me. I think he did not. He didn't come into the room when he kicked the door.

Re-Examination.—I didn't think he saw Miss Holmes when I spoke to her. I don't recognize Mrs. Godfrey, as I look at her now. I saw the blade about two hours after I was stabbed. Some one brought it to me, from the hall door. Spoke to old Mr. Van Nest about coming down. Mr. V. N. said he picked up the blade. Saw the prisoner best part of an hour that Saturday. Saw nothing to make me believe he was crazy.

Zephaniah Winslow, called and sworn, testified: I reside in Fleming, a quarter of a mile from Van Nest's, south. I was there the night of the

murder, between nine and ten o'clock. I was in bed, when somebody came and rapped, and told me that Van Nest's family were murdered. I then got up, and went down there as soon as I could. I saw Van Arsdale, who was wounded and weak. He said Van Nest and family were murdered. John G. Van Nest was lying flat on his face, with his left hand in his pantaloons pocket. I took hold of him, and found that he was dead. His right hand was partly under him. I found Mrs. Van Nest in the north bed room, dead. I covered her with a quilt. I came back to find the little boy. I went into Van Arsdale's room, and found him. He was not dead. His bowels were out, and bloody. He expired in half an hour.

Cross Examination.—I never saw the prisoner before the murder, nor until Saturday after the murder. I saw him there then, and when they put him into the carriage. The dead bodies were then in the house. They were buried on the Sunday following, in the burying ground at Sand Beach church. Mrs. Wyckoff died on Saturday afternoon, and was buried with them. The door of Van Nest's house was shut when I got down there that night. I didn't see any gun. Didn't examine his person to see his pockets, or what were in them. I have lived in that neighborhood fourteen years. I knew Peter Wyckoff and John G. Van Nest all that time. Never knew of their having a horse stolen in 1840, nor of their being witnesses on a horse trial; nor of their being in any way connected with a horse trial. I don't know Mrs. Godfrey. Don't know what hired man or help Wyckoff had in 1840, except old Mr. Blackwell. Isaac Devoe was the name of hired man. Blackwell was about sixty years old. Don't know how long he has been in this county. He is now at Weedsport.

Frederick Bennett, called and sworn, testified: I reside two miles south of Auburn. I recollect that a man named De Puy was there at Wyckoff's farm, in 1838, and I recollect a boy was living there with him, and that the boy's name was William Freeman. At that time the boy's mother lived with Dr. Clary, near my house.

Cross Examination.—When Freeman used to come to Dr. Clary's to see his mother, I thought he was not a very active boy. Didn't notice whether or not he was playful. He was rather young then. John G. Van Nest was a sober, steady, grave man, and pretty much always at home.

James Amos, called and sworn, testified: I have some acquaintance with prisoner. First saw him at my house last fall, at Schroeppel, in the county of Oswego. He came with four of De Puy's boys. Those De Puy boys reside in Schroeppel, half a mile from where I live. I had a husking bee, and the boys came down to the tavern, and thence to the barn, and the prisoner came with them. He stayed there and husked corn till we got through. They then went into the house—eat pie and cake, and then left. The next time I saw him was on the thirteenth day of last March, when I saw him at Schroeppel. I saw him as I was driving up to the tavern. He came out and asked me if I wanted to trade horses. He led the horse which he

wanted to trade away. It was a gray horse, and had on a plaid blanket with white lining, and surcingle. He had on a leather headstall, or halter, but no bridle. I told him I didn't want to trade horses. He then asked if I wanted to buy a horse. I told him No. He then went around the sleigh to Corning, Wallis, and Brundage, who were there, and offered the horse to Edwin Corning for eighty dollars. Corning looked at the horse, and asked him if that was the lowest sum he would take. He finally told Corning he would take fifty dollars for the horse. Corning then came to me and asked if I knew him. I told him I had seen him, but couldn't call him by name. Corning then said to him, "Where did you get the horse?" He said he had a horse given to him, and he had traded round and got this one. Corning then said, "I guess you stole the horse." The by-standers then said, "I guess he did, too." The prisoner said he hadn't stolen him. Corning then remarked, "Amos, you'd better stop him—he shouldn't go any further if I lived here." Others said the same. Corning then had hold of the halter, and the negro told him to let go. Wallis and Brundage then took hold of it also. Freeman had hold of the halter, and jerked one way—and the others jerked the other way. The negro then kicked Wallis and Brundage. After a while, they asked me (still holding the halter) to detain the man. I walked up and told them to let go the halter, and I took hold myself, and asked him to go a step with me down the road. He went with me a step or two, when I told him I had suspicion that it wasn't his horse. He said it was—that he had a horse given him, and had traded round and got this one. I then said to him, "I see youv'e got your hand hurt; how did you do it?" He said he got it hurt, but didn't tell me how. I did not discover that he was hard of hearing. I had strong suspicions of his having stolen the horse, and told him so. He said, "It's my horse, and you know me." I replied, "I know you by sight, but not by your name." He said his name was Bill Freeman. He then told me he husked corn in the barn last fall, for me. I then remembered him. I asked him more about his hand—whether he hadn't been in a fight, and hurt his hand. He said he hadn't. I told him that I didn't think he came honestly by the horse. He said that he could satisfy me that he did come honestly by it. He said he could satisfy me by the De Puy's. I then got some boys to go down to De Puy's, and fetch them up. He tried to have me let go of the horse, and said he wished to go along. I refused to let go. He got a little wrathy, and kicked me, and I had considerable of a tussle with him. Finally I told him I should put the horse in the barn and feed him, and would feed him, too, if he wanted it. He held the horse by his left hand. His right hand was in his breeches pocket. His coat was shorter than this one; it was a Webster coat, of a dark brown color. When he kicked, I saw his hand. There was an old cotton handkerchief around it. He made no use of his right hand. He wouldn't let me put the horse in the barn, and was determined to go on. I then made up my mind to take the horse from him. So I took hold of his thumb and pried it back.

I got the halter out of his hand by force, and handing it to Corning, told him to put the horse in the barn and lock him in. He did so. I then asked the prisoner to go into the house. During the scuffle, he told me that if he had a knife he would gut me. He declined going into the house. I took hold of his collar, and he kicked me; but I dragged him along. He tripped me up once, and I fell on one knee.

When he came there, it lacked five minutes of two o'clock in the afternoon. I thought that he was very strong. I didn't get him down. He got me down on one knee. When De Puy came, I asked him if he knew the prisoner. He said he did. I told him that I had stopped him, and had taken a horse from him, supposing that he hadn't come honestly by it, and asked De Puy to go and see the horse. He went; and I showed him the horse, and asked him if Freeman ever owned such a horse. He said he didn't know that he owned such a horse—that he guessed he couldn't own such an one. He told me that Freeman had stopped there as he came along, and that they drove him off, suspecting he had stolen the horse. I then asked Wallis, Brundage and Corning if they would keep him till I went and got a warrant for him. I got a warrant from Esquire Burke, and came back. I arrested him. I discovered no deafness in him then. After I had him under arrest, I asked him if he wanted some supper. He said he did. I told Gregg, the landlord, to get him some supper, and he did so. He went in and sat down, and I went too. We had sat there, may be, ten minutes, when Taylor came in. Freeman was eating. I cut up his victuals for him, as his hand was badly cut, and he could not well do it. I had no conversation with him at the table, only to ask him what he would have to eat. The wound on his wrist was where the scar is now. Taylor came into the room, and stepped around and asked him if his name was Freeman. The prisoner made no reply. Taylor called him a murderer, and used rough language to him. He called him a damned murderer, and said that if he had a gun he would blow his brains out. Taylor then told us of the murder of the Van Nest family. Freeman said nothing in reply. Taylor spoke pretty loud; as loud as I had previously, and louder. He was quite excited, and laid off his coat, and throwed out some chains, with which he was going to bind him. I told Taylor that I had arrested him. He then waited till Freeman had got through eating, and then he bound him in every way he could. He then took Freeman out of my custody.

Cross Examination. When I first saw Freeman, it was about two o'clock, P. M., of Friday. My husking bee was in the latter part of November, 1845, in the evening, after dark. I remember seeing Freeman there. Should not have remembered him if he hadn't told me of it. At the husking bee I had no conversation with him, but to hand him something to eat. We had been husking an hour and a half when they came in. We began about dusk. He went away from the house, that night, between ten and

eleven o'clock. I noticed that he appeared very still, said but little, but husked corn. He wasn't free in conversation, and was a stranger to me. He did his work, eat what was given him, and behaved perfectly well. I didn't notice his hanging his head forward then, nor on that Friday when he wanted to sell the horse. I was giving my horses water when he came up close to me. He didn't call me by name—didn't ask how I did—didn't tell me who he was. The first thing he said, was, "Do you want to trade horses?" I didn't notice his head. He had an oil cloth cap on. I said, No. He then said, "Do you want to buy one?" I answered, No. He then went to the other men. I can't be positive of what he said to Corning, except that he mentioned about buying a horse. He said he would take eighty dollars for him, I think. Corning took hold of the halter, and looked at him, and asked if he would take less. The negro answered, "I'll take fifty." They stood side by side. Corning was on the left side of him, and close to him. Corning then stepped to me, and asked if I knew him. I replied, that I couldn't call his name. Corning then asked him how he came by the horse. The negro told him he had a horse given to him, and traded round and got this one. Corning first said, "I guess you stole the horse." The negro replied, "No, I didn't." Then Wallis took hold of the halter and told him he believed he had stolen the horse. He told me that I knew him. He said, "You know me." I then had hold of the halter with him. He said, "I husked corn with you in your barn last fall." I said, "I see you've got your hand hurt; how was it done? I guess it was in a nigger fight." He said, "It is my horse; I haven't stole him." I told him I should like to be satisfied about it. He said, "I can satisfy you." I asked how. He said, "By the De Puys, down here." Then I said I would put the horse in the barn, and did so. I sent Gregg's boy to De Puy's, and Abram De Puy came up. When I got back, it was five or six o'clock, or about dusk. I read the warrant to him. He didn't make much reply, I don't think. I am not a constable; but was deputised to serve that warrant. I waited on him at supper, and cut up his meat. I noticed he didn't use his knife, and so I cut his victuals. I didn't notice any stooping look. He had been eating ten or fifteen minutes when Taylor came in. He had more hair on his head then than now. Taylor came directly on to us—took hold of his head, and said, "Ain't your name Freeman," and called him "a damned murderer." Bill muttered something which I could not understand. I was struck with astonishment when Taylor said he had murdered a whole family. He spoke loud and sharp, but the negro sat at the table and ate his supper. I looked at him with astonishment. He continued to put victuals into his mouth and to eat. He seemed startled, yet raised his fork and continued eating. Taylor was much excited, and proposed to take Freeman away from the table at once. I told him to let him alone—I had arrested him. Taylor afterwards searched his clothes, his pockets, and his boots; and made a thorough

examination. He found one cent. Nothing else but his clothes. Then they bound him. The prisoner said nothing. They staid there an hour, and Taylor then took him away.

Re-Examination.—He said something about another horse, but I can't say what. I think he acknowledged stealing the horse. I saw in him no symptoms of insanity. I was with him about an hour, before I got the warrant; and altogether I was with him four hours.

Alonzo Taylor, called and sworn, testified: I am a constable, and was last March. I found Freeman at Gregg's tavern, eating supper, about five o'clock in the afternoon of Friday succeeding the murders. I had not then been to Van Nest's house. I arrested him by virtue of a scrip issued at the Tocsin office. I called him a damn'd black scoundrel, and accused him of murder. He denied it. I asked him about the other horse. He said about murder, "I don't know any thing about it." He said, "they've got the horse." He didn't speak very loud. He said the other horse fell and he left it. After that, I couldn't get any thing more out of him. I coaxed him to tell me about the murder, and why he killed the child. He said he didn't know it was a child. Herrick and Parker took him into another room. I was called in, and he grumbled about their cuffiing him. He said, "I don't like the treatment; they are cuffing and beating me." Nobody succeeded in getting any thing from him further. After I went into the room they came out. I then put him into a sleigh and carried him to Phœnix. They said they hadn't hurt him. He complained of being deaf, but Parker and Herrick said they hadn't hurt him. He said nothing more. I brought the horse along. It was Burrington's. Freeman said he got the horse east of Auburn. He talked very little. We staid that night at Phœnix. Williams, a tobacco peddler, assisted me about keeping him over night. I rode on horseback, and he rode in a waggon. I had another negro with me to pilot me. I brought this other negro back, and I left the horse with Burrington.

Cross Examination.—I live at Cato. I started for Syracuse at first. The slip from the Tocsin office induced me to go. There is a family of Freemans living at Syracuse. I inquired if they knew Bill Freeman, and they said they did, but were no connection of his. He was eating when I found him. I told him that he was a black, infernal scoundrel. Bill rolled up his eyes and laughed. This was while he was eating. He said he knew nothing about the murder. I said, "you black rascal, you do." He smiled, and I drew my cane to strike him. They said, don't. He said nothing more to me. He was in the room with Parker and Herrick a few minutes. They were searching him part of the time. He was there in my presence half an hour. We searched him in the kitchen; pulled off his boots and cap, and made a thorough search. We found one cent upon him, and left it with him. I told him to stand up. He said not a word, only when they called me in; he complained that they were cuffing him and kicking him

around. I said I guessed they hadn't hurt him much, but he said they had. Some of them said he can hear quick enough now. I took him to Phœnix, and while going we tried to get him to say something. He told us that nobody was with him at the murder. I asked him how he could be so cruel as to kill that little innocent child. He replied, "I didn't know it was a child." He said of the horse, "I left him when he fell with me." When I asked him about his arm that was cut, he had a chew of tobacco on the wound. He chewed tobacco. He didn't complain of his wound. The cord of his thumb was cut. The doctor put a cloth around the wound. I staid over night at Phœnix, and set up all night. He laid still and quiet. I supposed he was asleep, for he said nothing and made no complaint. I went with him up to Van Nest's house. He said nothing there.

GEORGE VAN NEST, called and sworn, testified: John G. Van Nest was my son. I reside about one quarter of a mile this side of his house. I was called to the house at the time of his death. I found the point of the knife there. Miss De Groff hit the point with her toe. I heard it jingle on the sill of the door, and I went and picked it up. The blade exhibited appears to be it. Miss De Groff was carrying the chair into the other room for Van Arsdale. The blade was more bloody then than it is now. I saw no black man that evening, but my wife did. I don't know what clothes my son had on that day. He had a double breasted vest, and the one in court is the one, I think. There is a hole through it; through both parts, where it was buttoned. He wore this vest about that time.

CROSS EXAMINATION.—I was seventy-four years of age in April last, and have lived there thirty years. My son John was brought up there. My wife is living. I knew of no relationship with Mrs. Godfrey; never heard of her or her husband till after this affair happened. My son John G. was my only son, and was all my dependence in my old age.

MRS. VAN NEST, called and sworn, testified: I am the wife of George, and mother of John G. Van Nest. I remember well the night my son was killed. I, that evening, saw a black man in the yard of our house, about eight or nine o'clock. It was a moon-light night. I saw nothing in his hand nor did I notice his dress. He came by the large gate, and turned and went away towards my son's. He then came back again and stood by the fence a while. He then turned around and went towards my son's, as fast as he could walk, and I saw nothing more of him that night. I thought he had a cap on, but I couldn't discern whether he was a black or a white man. He put both hands on the fence. I feared he wished to do something that wasn't right. I afterwards found my son dead at his house. He was lying in the door, with his face on his right arm. His left hand was in his pocket. This is the vest, and this a little piece of the muslin of the shirt he had on. (Exhibiting them.) John was forty-one years old, and was married about ten years ago. He lived at our house about three years after marriage. I never heard of Mrs. Godfrey before, nor of this negro. My son was living

with me in 1840. He was very steady, grave, and reserved. He was never away from home except on business. He never had any enemies in the world. My son was justice of the peace, but held no office in the church. I was in the house, up stairs, when the negro came there that night. I blowed the light out, intending to see what he would do. I was in the upper room, and the window looks towards John's. There is a large gate at the wood-pile, two or three rods from the house, and the negro stood there. I saw nothing in his hand. The lights were all out. He stood there a very short time. He had got half way into the yard to the door when I saw him. He turned and walked away middling fast. I staid there till he came back. He went away straight towards John's, and we didn't lose sight of him until he returned. I saw him by the front door gate; he put both hands on the fence and looked north and south. I saw nothing in his hand. He staid there a little while, and then went up towards my son's. I then retired to bed, and had just forgot myself when I was called.

GEORGE BURRINGTON, called and sworn, testified: I remember the time of the murder. I lost a gray mare that night, and found her at Baldwinsville. I missed her on Friday morning. Her halter, blanket and surcingle were taken with her. They were all delivered back again to me. The mare was very fleet, and was worth eighty dollars. Freeman had looked at her about a week before, as he passed me in the street. I resided about a mile and a half from Mrs. Godfrey, and west from her house. I know her by sight. She lives about four miles from Auburn, on the middle road. My house is near the highway, and the barn stands partly in the road.

GEORGE B. PARKER, called and sworn, testified: I reside at Baldwinsville. On the thirteenth of March I was at Phœnix, attending a law-suit. I saw Amos there; his business there was for a warrant. He made application to the justice. Said he wanted to arrest a person, to him unknown, on suspicion that he had stolen a horse. Three quarters of an hour after, I heard of these deaths. I went to Gregg's immediately, and saw the prisoner. Had conversation with him there. Walter D. Herrick was there also. He resides at Syracuse. No others were present, I think, until the latter part of the time. I inquired of him in reference to this murder, whether and why he had committed it, whether he had accomplices, and what his object was. I asked how his hand was cut. It was not until repeated inquiries had been made that I got any answer. Finally he answered that he had a knife and was whittling there. I asked where the knife was. He answered that he believed he left it in the yard there. I asked him where he staid the night before, and asked him repeatedly. He said along the road there, somewhere. I asked him what place he came through before he reached here. He said he came to Phœnix, I believe. Phœnix is on the direct road from Syracuse to Gregg's. He said he came through Syracuse. I asked what time he came through Syracuse. He said about five o'clock. He said there was some lights at Syracuse. I asked what place he came through be-

fore he came to Syracuse. He said he believed they called it Nine Mile Creek. That is on the road from Auburn to Syracuse. I then asked him what place before Nine Mile Creek. He said he believed they called it Elbridge. That is on the direct route, also. Then I asked him what place before Elbridge. He hesitated some time, and I asked if it was Sennett. He said, "I shan't answer any more; if they can prove any thing against me let them prove it." I told him I didn't care about his making any confessions in this matter; that there was proof enough against him. He took offence at me. I found that he appeared to hear much easier sometimes than others. It was difficult to make him hear at all at first, but when I got him on the track he heard without effort. He then refused to answer, and wouldn't pay any attention to me. Herrick then commenced questioning him. He got over his feeling, and then I commenced questioning him. I asked him about the horse. I remarked in a laughing way, "That was a bad horse that fell down with you." He said, "He did." The mud was on his clothes; he looked at it and said, "He did." I asked why he didn't take a better one. He said he was in a hurry, and smiled as he said it. I asked him why he murdered the child. He said he didn't know that there was a child there. That was all the answer he gave me. I asked whether he knew Van Nest. He said he didn't know any thing about him. I pushed very hard for the reasons he had against Van Nest. He said, "I don't know who you are talking about; don't know any thing about him." He also said, "I suppose you know I've been in State Prison five years. I was put there innocently. I've been whipped, and knocked, and abused, and made deaf. There won't any body pay me for it." And there he stopped.

I couldn't get him to admit he'd killed any body. I tried him very thoroughly; yet he admitted he knew something of the transaction. I boxed his ears, and he called for the constable. My feelings got the better of my judgment, and I pulled his hair a little. He spoke to the constable, and asked if he suffered persons under his charge to be cuffed in that way. Taylor said he guessed he wasn't hurt. I got him to confess nothing there, nor did Herrick, in my hearing. I saw no signs of insanity. It didn't occur to me that he was insane. I thought he'd played a very strong game, and seemed to rely upon silence for his fortification.

Cross Examination.—The concealment which he practiced was of general knowledge pertaining to the transaction. I asked him whether he was put up to it, or was paid, or hired, or employed to do it. He said he knew nothing about Van Nest. The principal and only answer I could get out of him, for the cause of committing the crime, was, that he had been put in prison. When he commenced this narration he went through it of his own accord. He didn't say how he had been abused, nor that he had applied for payment to any body; but said, "there wouldn't any body pay me." It's rather my impression that he said he was put in prison for stealing a horse. I asked whether Van Nest had any thing to do with putting him there. He

said, "I don't know any thing about Van Nest." I repeatedly told him that it could be proved, but I wanted he should tell me of his accomplices. I asked if the De Puys were his accomplices. He said he didn't know any thing about it. I mentioned no other name. When he declined answering, I boxed his ears, and then he took offence. I took him by the hair and beard and gave his head a little shake. When I asked where the knife was, he said, "I believe it's over in the yard there." These answers were given in quite a low and monotonous tone. I was excited highly against him. I attributed it to his playing possum, and was wrought up pretty high, and he abruptly declined answering. It didn't occur to me that he was insane.

AUGUSTUS PETTIBONE, called and sworn, testified: I am sheriff of Cayuga county. I saw the prisoner the day he was brought into jail, and was present at conversations between him and Ethan A. Warden. Warden asked the prisoner what he killed those people for. He said, "they swore me into prison." Warden told him he was mistaken that it was another family. He said in reply, "was it?"

DR. LEANDER B. BIGELOW, called and sworn, testified: I am a physician and surgeon, I have been in practice over twenty years. I know the prisoner and have had occasion to visit him several times in jail to ascertain the state of his mind. I began about the first of June, and continued my visits until week before last. Have put many inquiries to him about this crime. I have inquired how he prepared and what he used in killing this family. He said with a knife. I asked where he procured his knife. His reply was, "I got it of a blacksmith right down there by the Exchange." He had previously said he had a knife in a club, which was about four feet long. I asked where he fitted the knife to the club. He said, "At the place where I boarded." I asked where he got the club. He said, "I fixed that up by the big dam at a shop." I asked what he did with the knives. He said he bought two knives and they didn't suit him. He said "I gave one to Sam or Clem Hersey." I then asked what he did with the other knives. He said he sharpened them, fixed them and laid them away. I don't recollect his language exactly. I think at this stage I asked what next. He said he carried the stone to Hiram. I asked what stone. He said a whetstone which he had. I then asked what he did with the knives. He said he took them up where he boarded and put one under the head of his bed, and the other under the bed. I asked him in conversation about going to Van Nest's at the time of the murder. He said he went up stairs and got his things, carried them down and hid them in or under the wood. I inquired what he did then. He said he went back into the house. I asked what he did in the house. He said, "Nothing, but stood round there and thought about it; didn't know what to do, but finally thought I'd go, any how." I then inquired what he did then. He said he went out and got his things and started off up the road. In this conversation I next asked how he carried the knife which he killed with. He put his hand to his breast, left side,

and said, "In here." I next inquired who he killed first. He said Van Nest. I asked what Van Nest said. He said "nothing" at first, but continued, "He asked me what I wanted." I should think he related no further conversation that took place then. In one conversrtion I asked where, on his person, he stabbed Van Nest. He looked up, then cast down his eyes and showed me, to the left of the breast bone. I asked how many he killed. He said five.

He said about taking the horse, when I asked why he took the horse, "Well, my wrist was cut and I thought I could go quicker." I asked where he left the club when he went to Van Nest's. He said "Out by the gate." He said he rode the first horse down near New Guinea. I questioned him until he got into his story that the horse fell there. I asked why he didn't get on again and go on; his answer was "he wan't good for nothing." I asked if he did anything to the horse; he said yes, he stabbed him. I asked him why he stabbed him; he said he fell on him and hurt him. I asked him where he went then. He said, "I came down into the village and went up the side walk to the middle road toward Syracuse." I asked if he got another horse. He said Yes. I asked where. He said "on the middle road." I asked how far from the village. He said a mile or mile and a half. I asked where he went then. He said, "Well, down back there by Phœnix." I asked him if he went to Syracuse. He said, "I did." I asked what was the time he passed through Syracuse. He said, "About daylight." I asked what he did with the club with the knife in it. He said "I threw it away little this side of Syracuse." I asked him what he went down to Phœnix for. He said, "Well, my hand was cut, and I thought I'd go down back there till I'd cured it up."

Cross Examination.—I have been a surgeon to the State Prison about seven years. I recollect of Freeman's calling twice at the Hospital. The first time he came was I think in January, 1844 or '45, and complained of earache and was prescribed for; he came again in June or July and complained of costiveness, I gave him a cathartic. I have indistinct recollection that he was deaf. I don't recollect how I answered on the preliminary trial as to his deafness. I think I answered as now; I may have answered that he was deaf, and now I say I don't know to what degree he was deaf. These conversations above took place since the court commenced, and they were had with reference to his sanity, at the suggestion of the District Attorney. Luke Freeman was present at one examination. I asked William how old he was; don't know that Luke was then present. He said twenty one the first of last September. I'm not positive as to what time. I asked how long he'd been in jail; he said about three months. Luke pointed to a scar on his wrist and said he got it in Weedsport. At first Bill said, "No, it was another," and showed his right arm where was a scar; as to the other cut, he said "I got that up to the Lake where I was." I asked him what were the names of the days of the week; he answered, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and hesitated; then said Sunday. I asked him

whether one day was better than another. He said, "I don't know as one's any better than another." I asked if we ought to go to meeting. I think he said, "Well, I s'pose we ought to go to meeting." I asked when. He said, "The Sabbath." I asked him how many days in a week. He said six; and after hesitation, "six days and the seventh." I asked him how many weeks in a month; his answer was four. I asked how many hours in a day; he said twelve. I asked him how many in a night; said twelve. I asked how many in both; he said twenty four. I asked how many shillings in a dollar; he said eight. I asked how many cents there were in a dollar; he said one hundred. I asked him how many days there were in a year; he said, "I don't know exactly." I asked how many months there were in a year; he said twelve. I asked when he came out of prison; he said, "Twentieth of last September." I asked how long he was in prison; he said five years. I asked would it be right for me to kill Luke now; he said "I don't know how you could kill him." I asked if it would be right if I should. He replied, "I don't know." I asked if he would like to see me do it; he said, "I should not think any thing about it." I asked if he was lonesome; he said, No. I asked him how many he killed; he said five. I asked whether they were men, women or children; he said, "Two men, two women and one child." I asked whether he expected to be hung for it. He said, "I don't think any thing of it."

I said, "Are you afraid you shall be hung?" He said, "No, sir." I asked what made him kill that family. He answered, "Well, to see if I couldn't get revenge, or get some pay for being in State Prison about a horse; and I didn't do it." I examined his pulse and found it seventy-seven at the commencement, and at this stage it was eighty-one, as he was standing. I asked, "Why did you not kill the widow Godfrey first?" He said, "I got it in my head that I would go up that way first, and then go round there." I asked, if on that night he went to widow Godfrey's. He said, "I did." Then I asked why he didn't go into the house. He said, "Because my hand was cut, and I couldn't think to go in and handle my hand." I asked how he went into widow Godfrey's yard. He said, "I rode right into the yard." Then I asked, "Whose horse did you have?" He said, "I don't know whose." I asked, "How did you get the horse?" He said, "It was to a barn; my hand was cut, and I didn't know what to do; and I went into a barn, took a horse, and thought I would ride him." I asked, "Did you have another horse?" He said, Yes. I asked where he got it. He said, "Up there where I was." I said, "When you killed the folks?" He said, Yes. I asked where he got the second horse. He said, "I got him out on the middle road, towards Syracuse." I asked, "Are you sorry you killed that little child?" He said, "I don't think much about it." I then repeated, "Are you not sorry you killed the little child?" He said, "I don't know but it was hard—it was little—I rather it was bigger." My next question was, "Do you not know it is not right to kill folks?" He replied, "I s'pose

it aint right to kill folks." I asked, "Who was keeper of the prison when you was there?" He said, "Captain Cook was keeper when I went there." I next asked him whether there was any other keeper. His answer was, "Mr. Doubleday was keeper." I next asked him whether there was any other. He said, "There was another one." Then I asked what his name was. He said, "I don't know what his name was; the same that is over there now." I next asked, "What was the keeper's name in the shop where you worked?" He said, "Captain Mills." His pulse was then at eighty-six.

Tuesday evening, 24th of June, I examined him again, and this examination was alone. He sat on his tub, and held the candle. It was during the preliminary trial. He had been in court that afternoon. I asked William where he had been. He said in the court house. I asked what he went there for. He said, "I don't know;" or, "Well, I can't tell what I did go there for." I asked if he went alone. He said, "Two went up first time, and one the last time." He'd been in twice. He said, "I think 'twas sheriff went with me." I asked who he saw there. He said to this purport, "I saw a good many there." I asked him if he knew any particular ones there. I think he said, "I knew Mr. Wood, who used to be jailer." I asked how he knew him. He observed that Wood came round and talked with him. Then I asked whether Wood talked with him in the court house. He said, "No; he came round and talked to me in my cell, here." Then I asked if he was in jail when Wood was jailer. He said, "Yes; I was in about a horse." I asked him how long ago. He said, "Five years ago the twentieth of last September. I mean, I went to prison five years ago, from here." Then I asked if he saw any body else, that he knew, in the court house. He said, "I saw Mr. Doubleday." I asked what they were doing in the court house. He said, "I didn't know exactly what; they was talking; that is all I could see." I asked what he killed the Van Nest family with. He said, a knife. I asked where he got it. He said he got it of a blacksmith, right by the Exchange. I asked how he fixed it to kill them. He said, "I had one in the first place;" then paused, and said, "I had two in the first place, and gave one to Sam Hersey; I didn't like 'em." I asked what he did with the other knife. He said he fitted it to a stick. I asked him what then. He said, "I sharpened it up to suit me and laid 'em aside, and let 'em lay there." I then asked what then. He said, "I took the stone back, and gave it to Hiram." I asked what stone. He said, "A whet stone I had of him." I asked what then. He said, "I stood round and thought about it, and didn't know whether 'twas best to go or not. I thought I would go, any way, and I started." Then I asked what then. He said, "I went to the house—up stairs—got my things—hid them under the wood, and went back into the house." Then I asked, "What did you do then?" He said, "Nothing. I stood round there until I went up to the lake." I asked him who he killed first. He said, "Van Epps, I think they called him." Then I asked who next. He replied, "A woman; don't know who she was. I saw her pass by the window."

Then I asked who next. He said, "A little child lay on the bed; I killed him next." Then I asked who next. He said, "A man up stairs; but I didn't kill him, for I saw him afterwards."

I saw nothing to satisfy me that the prisoner was insane; not enough to satisfy me. I find him a man that I consider of low, degraded intellect, and of very limited knowledge. I suppose he was put into prison at fourteen or fifteen years of age, and had little chance there. At one examination, he stated that he went to meeting some. From my examination I have made of Freeman, I am satisfied that he is deaf in one ear, and partially so in the other, and can hear but few words that are addressed to him.

The counsel for the people here rested.

Mr. Wright then opened the case to the jury, on the part of the prisoner, in substance as follows:

May it please the Court—

Gentlemen of the Jury: We have now arrived at that stage of this much protracted and exciting trial, when it becomes the duty of those having charge of the defence, to explain to the court and jury the nature and grounds of that defence. And first, gentlemen, I may be permitted to speak in relation to the reasons of our appearing here as counsel in making a defence in this case.

I very well know, gentlemen, that we have been censured, and in no measured terms, by those who wish to be considered as good citizens, and worthy, and honest, and law-abiding men, for appearing at all in defending the prisoner at the bar. But not so have we learned our duty.

To us, gentlemen, the prisoner was a stranger until after his incarceration in yonder jail. His defence has not been sought for by any of us. My respected, learned, and most distinguished friend, who leads in this defence, engaged therein after frequent and urgent application by those who, as we think, honestly and firmly believed that when the fatal blows were given by the prisoner at the bar, he was bereft of that reason, the possession of which alone could render him amenable to this tribunal for his acts. And as regards myself, you well know, that the onerous and unpleasant task was imposed upon me by the court, whose directions, in that respect, I was scarcely at liberty to decline. But I must, in justice to myself, say, gentlemen, that however much I may and do respect the authority of this court, yet, whatever might have been the consequences to myself, I never would have consented to act as counsel for the prisoner in this case, had not my own mind been firmly, aye, beyond any reasonable doubt, convinced that the prisoner is not now, and was not at the time of the deaths of his victims, in any proper sense of the word, sane, or accountable, and that he, therefore, was not, and could not be guilty of murder. Although we appear here as counsel for the accused, and as such are bound to do all in our power to prevent an unjust or an illegal conviction, yet, gentlemen, we, too, are the fellow citizens of those who were so unexpectedly cut off from amongst us, and we cannot,

nor need we deny, that we do feel our responsibility as citizens, whilst acting here in the capacity of counsel; and for myself, I can most solemnly assert, that my duty as counsel in this case, is not incompatible with my duty as a citizen, for I do most conscientiously believe, gentlemen, that the conviction of this man, (if man he can yet be called,) by reason of public clamor, or public excitement, and contrary to the evidence which has been, and which shall be given in the cause, would be a much greater calamity to our common country than the death of those who have fallen by his insane hand.

And this, gentlemen, brings me to the defence interposed here. I need scarcely say to you, gentlemen, that that defence is insanity. And why have we interposed that defence? It is none of *our* work. It has not been got up by the ingenuity of counsel, for the purpose of saving the guilty from the effects of his crime. That defence was suggested by others, before any one of us was in any wise connected with the case.

Men, eminent in this branch of medical jurisprudence, men who were called to visit the jail in which the accused was confined, without any reference to him or his offence, saw him there, and became satisfied that there was at least reason to doubt his sanity. Further examination convinced them that there was no doubt in the case, and hence, it became a duty which the citizens of this county owed to public justice, that that question should be examined; and I need hardly say to you *now*, that the further examination tended but to confirm the previous impressions, until that which was but conjecture, became conviction.

You have been told by the learned gentleman who opened this case on the part of the prosecution, that he, as also the learned and distinguished public functionary who leads in this prosecution, saw *at once*, upon their first interview with the prisoner, that there was no insanity in the case. We do not say either of those distinguished gentlemen have, in the least, mis-stated his impression; but we do say that others, quite as well qualified to judge upon that subject, and quite as likely to be impartial in their judgments, and correct in their conclusions, came to a very different conclusion, in which we fully coincided. And hence, gentlemen, we did interpose the plea of insanity; a plea which, although it may now and hereafter be, as it heretofore has been, ridiculed as the device of counsel on behalf of those who have no other defence, yet it is one, which, of all others, should, when honestly interposed, be treated with deference and respect, and examined with caution and without prejudice; a plea which, if false, is the most difficult to sustain, and, if true, should be the last to be disregarded.

But, gentlemen of the jury, this is no new plea; it is, and for centuries past has been, well known to the common law, and it is now also incorporated into and forms a part of the statute law of this State, which declares that "No act done by a person in a state of insanity, can be punished as an offence; and no insane person can be tried, sentenced to any punishment, or

punished for any crime or offence, while he continues in that state." (2 R. S., 697, Sec. 2.)

Hence, you will see, gentlemen, that it is not the plea itself which our opponents can make the subject of their ridicule, or, justly, of complaint. But, say they, it has already been tried and disproved. Disproved, indeed! and how, and when, and where? Was it when the accused was brought into court to hear the offence with which he was charged read to him, by the district attorney? There were some who were convinced that he either did not hear, or that he could not understand the nature of those charges. That he heard, was evident; at least we will not presume that the prosecution would put a *sane* man upon trial for his life, without first, in some way, communicating to him full knowledge of the charge which he must meet; and if he did hear, he must certainly be either more or less than human, to have shown such stolid indifference. But let that pass, gentlemen. But, say the learned counsel opposed, that question has been passed upon and decided by the previous jury. That we deny; we deny that that jury, by their verdict, have passed upon the issue submitted to them. Look for one moment, gentlemen, at the verdict they have rendered. I will read it to you; they say, "We find the prisoner at the bar sufficiently sane in mind and memory to distinguish between right and wrong." And is that sanity? I will venture to assert, that there is no court claiming to act according to any civilized notions, that will so hold. At any rate, we do know that the courts of this State do not so hold. The lowest standard which is ever required in questions of this kind, is, that the accused shall be able to distinguish right from wrong in regard to the particular transaction in question. We tell you, gentlemen, that the finding of that jury is no verdict; and we shall treat it accordingly.

[The counsel here referred to the motion which had been made to postpone this trial, and of the trouble and difficulty of obtaining the jury, &c., of the challenges to the jurors, and the result; and deprecated any unkind feelings which might have arisen in the minds of any of the jurors thereby; and expressed the hope that the accused should, at least, receive at their hands a patient hearing, and an impartial trial. He then proceeded.]

The learned district attorney has told us, that this is the most important trial that has occupied the courts of this country for the last half century. Indeed! Why so? There is no property at stake. The result cannot resuscitate or reanimate the forms of the slaughtered victims. Why, then, is this trial so very important? It certainly cannot be because the life of an "unlearned, ignorant, stupid, and degraded negro" depends upon it; the life of one who is by them conceded to be of very low intellect, indeed—scarcely above the brutes that perish. It cannot be because a plea is interposed by counsel in a case where learned gentlemen, who are not adepts upon the subject of insanity, can so easily and at a glance detect its non-existence.

But, gentlemen, I will not deny that this cause is important, and as

such we have treated it, and as such we shall continue to treat it, despite of lamentations here or elsewhere; despite of ridicule of counsel, the contumely of some, and the threats and denunciations of others of our fellow citizens. It is important. The public has suffered themselves to become excited upon this subject; there is a demon thirst for blood, an unchristian thirst for revenge; and it is important to ascertain whether, under all these disadvantages, we can obtain for this once a man, this now but a clod, a fair and impartial trial, by and before a jury of our country. It is this, and this only, that renders this cause important.

The learned district attorney has suffered himself to declaim to you upon the consequences of an acquittal. He has told you that the effect of an acquittal by you, would be to discharge the accused; to release him from imprisonment; to turn him loose upon society to kill and slay your fellow citizens. What! a *sane* man, and so dangerous? But, gentlemen, in this the learned gentleman has suffered his imagination to outrun the law and the facts of the case. Does he forget, that although acquitted upon the charge for which he is now upon trial, yet there would remain some three or four other indictments for murder against him? For I need not say to you, at this stage of the trial, that he is now upon trial for the murder of John G. Van Nest, only. How, then, is he to escape from confinement, were he to be acquitted by you? I tell you, gentlemen, it cannot be. Whether convicted or acquitted, he cannot, and, I will add, he should not, be allowed to escape from the restraint of the law. I concede, nay, I aver, that he is, and he long has been, wholly unfit to roam at large. He would be, as he has been, a dangerous person, if at large. And he would be so for the sole reason that his judgment and reason have been, and are, dethroned; because he now is, and long has been, suffering from a diseased brain, and is and has been in a state of insanity. But I do not say this to influence you in regard to the verdict which you shall render; that must depend upon the evidence as it shall operate upon your understandings. If you shall be convinced that he is guilty of the death of John G. Van Nest, of which he stands charged, and that he was at the time sane, then, gentlemen, I trust you will so say, unhesitatingly, whatever may be the consequences. And, on the other hand, should you be convinced that at the time of the death of that lamented fellow citizen, the accused was insane, then, gentlemen, I trust, and will not doubt, that you will most cheerfully so say by your verdict, let the consequences of that verdict be what they may.

The district attorney has also suffered himself to speak of the frequency of the interposition of the plea of insanity, of the difficulty of bringing offenders to justice. Gentlemen, I will ask the learned District Attorney, I will ask you, if the case was ever heard of, where such plea was interposed successfully, unless true in fact. He has also, by way of ridicule I suppose, suffered himself to speak of somnambulism in connection with this subject, and would fain carry the impression, at least, that the one was as easily

feigned as the other. But such declamation is nothing new; it has been used before, and doubtless will be so used again. In speaking of the trial of Louis Lecouffe, who was tried at Paris in 1823, Doct. Ray, in his Medical Jurisprudence, (Sec. 84.) says, "Against all this array of evidence, the advocate general had nothing to offer but the idle declamation usually resorted to on such occasions. The attempt of the prisoner's counsel to establish the existence of imbecility and mania, he reprobated in the severest terms, as dangerous to society, subversive of social order, destructive of morality and religion, and affording a direct encouragement to crime."

Had the learned author attended this trial, he could not more truly have described the efforts of our learned and distinguished adversaries.

But, gentlemen, had no one testified upon the subject, methinks any one upon reflection might be tempted to doubt the sanity of the accused. Why did he commit these five-fold murders? What was the motive? He had no ill will against any of them; they had never offended him; his object was not plunder; he took nothing; he did not attempt to take anything. No motive whatever, not only no adequate motive, if such term can be applied in any such case, but no motive whatever has been, or, as I think, can be assigned for the deed; and shall we, can we for a moment believe that a *sane* man can thus kill and slay his fellow man? I cannot so believe. But I do not therefore say that *you*, sitting as jurors, to try the prisoner upon the evidence, can safely come to this conclusion; *you* must have affirmative evidence upon the question of this man's insanity. And this brings me to the question, "What is insanity as now understood, and as that term is used in the Revised Statutes?" Doct. Ray, in his work before cited, tells us that "it should be distinctly understood that it is, first, a disease of the brain; and secondly, that in its various grades and forms, it observes the same laws as diseases of other organs." (Sec. 92.) He further tells us that "Mania arises from a morbid affection of the brain." (Sec. 93.)

And Doct. Brigham, principal of the State Lunatic Asylum, at Utica, than whom there is not a more pure minded man, or one better qualified from education, habit, and opportunity to judge of this matter, has told us, when testifying under the solemn sanctions of the oath of a witness, in this cause, that insanity is a disease of the brain; that "there never can be insanity without disease of the brain." He says, "We say the mind is diseased, and we have all heard it so, and here in court, but it is not strictly correct; no more than to say in disease of the lungs, that the breathing is diseased. The mind itself is, we believe, immaterial and immortal, and incapable of disease or change. If the mind can become diseased, or changed, it may die, like other organs of the body. But, it being connected with the brain, by which it operates in this life, when the brain becomes diseased, the mind becomes disordered in action; just as when the stomach is diseased the digestion is disordered; or when the lungs are diseased the breathing is disordered. But the brain is such a delicate organ, it cannot bear much

disease. Sometimes in insanity we find but little trace of disease, so trifling as not materially to disturb the health. Hence we find the most preposterous ideas and notions kept up for years, and but little disease of the brain. The brain, being the organ of the mind, when that becomes diseased the mind becomes disordered."

Thus you will perceive gentlemen, this is no mysterious matter, no special visitation, but that to which all flesh *may be* heir to; something that must be proven by the testimony of witnesses, and be judged of as any other matter of fact.

It is not necessary, to constitute a man insane—nor indeed is it usual—that he shall lose any of his faculties, but that some one or more of them shall become deranged, disordered, not lost or destroyed; and so says Mr. Guy, in his work upon this subject. He says, "The insane differ from the sane, not in having lost any of their faculties, but in exercising them differently." (Guy, 323.)

But, says the district attorney, this man's faculties are *all* sound. That, gentlemen, is the question between us; the question that you, and not he, must decide. He says this man had premeditation; he prepared his weapons before hand, and then concealed them until he wanted them for use. And what does that prove, gentlemen, upon this subject. Guy tells us, that "the maniac, if naturally of a reserved disposition, or when impelled by a strong motive, has the power to conceal his delusion." (Guy, 325.) He further says, "The acts of the madman often evince the same forethought as the sane." (Guy 326.) "He is often conscious of his state, and knows the legal relations in which it places him." (Guy, 327.) I believe, gentlemen, that is more than is pretended here, in regard to the accused. I think we have not as yet heard from any witness, that Freeman has ever said, or done, or admitted any thing, whereby it could even be suspected that he understood, or that he now understands, the legal relation in which the act committed by him has placed him.

But, say the learned gentlemen who appear for the prosecution, he has memory, and very retentive too. We do not deny that he has memory, and retentive, too, in regard to some things. But was there ever an insane person who had not? Nothing short of utter and total imbecility can destroy that organ; it may be very much diseased, and, in regard to some things, or perhaps it would be more correct to say, in regard to some class or classes of things, it may be entirely gone, when as to other things or classes of things, it may be unimpaired. We have many instances of the kind in the books. Hear what Doct. Ray says, upon this subject; "Generally speaking," he says, "after the acute stages have passed off, a maniac has no difficulty in remembering his friends and acquaintances, the places he has been accustomed to frequent, names, dates and events, and the occurrences of his life." (Ray's Med. Jur. Sec. 291.) And has Freeman shown more than this? Doct. Ray, further says, "The ordinary relations of things are, with some

exceptions, as easily and clearly perceived as ever, and his discrimination of character seems to be marked by his usual shrewdness. His replies to questions, though they may sometimes indicate delusion or extravagant notions, generally have some relation to the subject, and show that it has occupied his attention." (Id.) And now, gentlemen, apply that doctrine to this case. All the information we have from Freeman, has been procured by interrogating him; and you will remark, that his answers are uniformly very short. He never converses, not even for a single sentence. It is true he generally answers questions that are asked, if within his comprehension, which is conceded to be quite limited, but his answers are uniformly of the shortest, and most generally in monosyllables; and do not his answers, when asked why he killed these people, most clearly indicate his delusion?—"wanted my pay." And was that the "pay" a sane man would want, and from one who never owed him—with whom he had never dealt? Was there not delusion here? But I must leave this for another, in whose hands it will meet much better justice.

But, says the learned counsel for the prosecution, when we ask what is insanity, "The law has settled that." Indeed! and how has it been settled? Why, says the district attorney, "any person who knows enough to distinguish right from wrong is sane." But there are many cases, and all of the late cases upon the subject decided in this State, and also in Massachusetts, which show that such is not the law. A person must at least have sufficient reason, mind and memory to distinguish right from wrong in relation to the particular act charged against him. Hear what Doct. Ray says upon this subject. "That the insane mind is not entirely deprived of this power of moral discernment, but on many subjects is perfectly rational, and displays the exercise of a sound mind, is one of those facts now so well established, that to question it, would only betray the height of ignorance and presumption. The first result, therefore, to which the doctrine leads, is, that no man can ever successfully plead insanity in defence of crime, because it can be said of no one, who would have occasion for such a defence, that he was unable in any case to distinguish right from wrong." (Ray's Med. Jur. Sec. 17.) [The counsel here read Sect's. 17 and 18, of Ray's work, and proceeded.] Thus, gentlemen, you will perceive, the doctrine contended for by the prosecution, and which, by the by, was the doctrine which caused and which received the verdict of the former jury in this case, stands plainly, and palpably, and flatly contradicted by the authorities of our courts, as also by the authority of the medical writers on this subject.

Much has been said, gentlemen, in regard to this defence. It has been characterized as a dangerous doctrine, liable to great abuse; and much, indeed, has been said upon the subject that can have but little reference to the case before you; for, as I have already shown you, gentlemen, there can be no danger in this case to society, or to individuals, should the defence prove, as we think it should, and as we hope it may, successful. But the

justice of such a defence, when true, in fact, has been ably, eloquently and truly stated, by the author from whose work I have already so liberally quoted; and I must here beg your indulgence while I read again from his able work.

[The counsel then read Sections 66, 67 and 68 of Ray's Med. Jur.]

The learned counsel for the prosecution insist, that upon us lies the onus, as the lawyers call it, of this issue—that is, that we must prove the insanity; that inasmuch as men are generally sane, and we claim the exception, we must show, affirmatively, that such is the case. Well, gentlemen, however hard, and, allow me to add, somewhat absurd, it may appear, to require a crazy man to prove his insanity, yet I suppose such is indeed the law of the land, and we must conform to it. Then, gentlemen, how shall we prove this issue? What kind of evidence shall we present to you, to convince your minds that this man was insane at the time the offence is alleged to have been committed? We shall first show you the accused as he was in his infancy, and in his boyhood; that he was an active, bright, sprightly lad, in no wise addicted to quarreling or other evil practices. In fact, if our information be correct, we shall show you that he was, when young, good natured and kind in his disposition, and that he so remained until after his incarceration in the penitentiary for a crime which he then and now insists he never committed. That while confined in the prison, he was abused, ill treated and flogged; that he became morose, soured in temper, and desperate, and was so altered upon returning to the world, that his friends scarcely knew him; even his mother could scarcely believe it possible that this morose, surly and sour young man could be her bright and cheerful boy, from whom she parted but a few years before. This change alone, gentlemen, you will find, from the medical books which we shall produce before you, and from the testimony of the medical gentlemen whom we shall examine upon this subject, to be one of the most unfailing symptoms of insanity; so much so as to be considered a test in all such cases.

[The counsel then spoke of the ignorance of the accused; of his want of opportunities for improvement; of his isolated position amongst us, by reason of the wicked and unchristian prejudice against him and all others of his kind, by reason of their color; of the wrongs he had suffered, the hardships he had endured, and the cruelties which had been inflicted upon him; and was amazed that we should now hold up our hands in holy horror at the result of our own treatment of this "unlearned, ignorant, stupid and degraded negro."]

Yes, gentlemen, those epithets, as used by the learned district attorney, are all applicable, and yet there are men, even in our profession, who dare believe that "God made of one blood all the nations of the earth;" and that notwithstanding all his ignorance, and stupidity, and degradation, he has been a brother man, made in the image of his Maker, and might have so continued but for the brutal treatment received by him amongst this Chris-

tian community. That notwithstanding all this, he is yet entitled, and so far as the efforts of his counsel can secure it, he shall have a hearing as candid and as patient, a trial as fair and impartial, as could be accorded to him were he the son of an ex-president.

But, gentlemen, there is another species of testimony, which is allowed by the laws of the land, and of which we intend to avail ourselves in this case. I allude to the testimony of medical witnesses; of those who have been accustomed to the society and treatment of the insane. And we hope you will cast aside all prejudice, if any you now have, against these gentlemen, or the evidence which they have already given, or shall hereafter give.

You have been cautioned by the learned counsel opposed, against the evidence of these witnesses. You have been told that there is great difference between "testimony" and "evidence;" that "testimony is but the declaration of witnesses, and becomes evidence only when it carries conviction." That may be a very comfortable doctrine for a juror who is desirous of rendering a certain kind of verdict; for if this view be correct, I will guarantee conviction will not follow, unless the declaration of the witnesses shall correspond with the wishes of the juror. I trust, gentlemen, nay, I will not doubt, that you will at once reject a doctrine so absurd and so dangerous. Again, the learned counsel who here represents the county, has warned you most earnestly, and with much solemnity, against placing reliance upon the opinion of witnesses. And in this connexion he most unnecessarily, and, as we think, rather rudely, arraigned before you the most estimable and worthy, and not more estimable and worthy than learned, principal of our Lunatic Asylum, and also against the president of the State Medical Society. Gentlemen, I know not your feelings or views upon this subject, but to me there appeared something so grating to the feelings, and so repugnant to the good taste, and so foreign to the courtesy that should in all cases govern counsel when speaking of those who are, by the process of the court, and at great personal sacrifice, compelled to attend as witnesses upon this trial, in behalf of one who can in no event, nor by any possibility, remunerate them, even with the small pittance of his thanks, that I know it will be unnecessary to do more than merely allude to the circumstance, to cause even the learned counsel to regret that in the hurry and excitement of his opening speech, he should have sneeringly compared the opinions of these and other eminent gentlemen, whose testimony has already been heard in this defence, to the belief in necromancy, divination, &c.

The learned gentleman told you to start with no mysterious notions in regard to this matter of insanity; that it was not men of letters, those who were crammed with theories, who should give the law in such cases. Why, gentlemen, what would the learned counsel have in this case? Our poor senseless client is so ignorant, it would almost appear, from the learned counsel's estimate of him, impossible that he ever could have changed for the worse, and without some such change argues the counsel, he cannot be in-

sane. On the other hand, our witnesses are so learned, or so crammed with theories, (to use the language of the learned gentleman,) that they are unsafe judges in relation to the question of his sanity. No matter that they have devoted the energies of a well disciplined and cultivated mind to the diseases of this of all other the most peculiar and sensitive of the human organs; no matter that they have for many years devoted their time and attention, their sleepless nights and their watchful days, to the care and attention of these, the most unfortunate of the human race; no matter that with philanthrophy unbounded, they have devoted themselves solely to the study and alleviation of "the mind diseased." No matter for all that—yet because their learning, their experience, and may I not add, gentlemen, their wisdom, does not happen to coincide with the opinion of the learned counsel, in regard to the condition of the mind of this particular subject—this "unlearned, ignorant, stupid and degraded negro"—they must be the subjects of his ridicule, and that science, the most difficult in the range of human studies, is compared with the exploded errors of a barbarous age. But, gentlemen, I was glad to hear the learned counsel, in the warmth of his address to you, refer to the scene between Festus and the great Apostle to the Gentiles. Nothing more apposite to the present occasion, could have been selected from that inspired volume than this most memorable scene. "Festus said with a *loud voice*, (I wonder gentlemen if he had ever been district attorney,) Paul, thou art beside thyself, much learning doth make thee mad;" and so says the learned district attorney, to the mildest and gentlest of spirits, whose learning is doubtless as much beyond the comprehension of the learned counsel, in this case, as was that of Paul's beyond the comprehension of the most noble Festus, in regard to the matters about which Paul was then pleading. And well might Doct. Brigham answer his accuser in the same language as was used by the great Apostle on that occasion, and with strict truth: "I am not mad, most noble Festus, (most learned district attorney,) but speak forth the words of truth and soberness." But, gentlemen, I must bring this part of the subject to a close. It is, you are aware, the sheet anchor of our hopes in this case, and I must therefore be pardoned for the time I have spent upon it; and I know that I could not express my own feelings and opinions, half so well as they have already been expressed by the author from whom I have already and so liberally quoted. I will therefore close this branch of the subject, with reading an extract from his invaluable work. [The counsel then read to the jury, Sects. 29 and 30, of Ray's, Med. Jur.]

And now, gentlemen, in conclusion, I must beg, nay entreat of you, in the name of that justice which you are called upon to administer, to cast aside any prejudice which you may have imbibed against the prisoner, his counsel or his defence; to give to his witnesses a fair and impartial examination; to his defence a fair and impartial scrutiny, and to his counsel a fair and impartial hearing. And as you hope to have meted out to you, so do you mete out to this wretched imbecile the same measure of justice. And should you

conscientiously come to the conclusion that he now is, and at the time of the perpetration of the deaths of his victims, was of sane mind, whatever may be the consequences to him, or to others, so declare by your verdict. And, on the other hand, gentlemen, should we succeed in bringing to your minds that conviction which now acts upon ours, (and which enables us, as you must already have seen, to labor zealously, and, as we trust, in all faithfulness; notwithstanding we are surrounded with the multitude in which we can scarce recognize a smiling face, or an approving look towards us; notwithstanding our professional prospects may be, and perhaps must be seriously affected by our zeal in defence of this "unlearned, ignorant, stupid and degraded negro;") that he now is and for months, nay for years before the fatal transaction referred to, was an insane man, and wholly irresponsible to this or any other court for his acts, I will not, I dare not doubt that you will for one moment hesitate so to declare by your verdict, whatever the consequences may be to yourselves, or to him.

WARREN T. WORDEN was then called as a witness on the part of the prisoner, and being sworn, testified: I have resided in this village for twenty years, and am a counsellor at law by profession, and for many years have been in practice. Having heard much of this prisoner, I was induced to visit the jail where he was confined, for the purpose of satisfying myself whether he had mind enough to be held legally responsible for his acts. Several persons, among whom was Dr. Briggs, had represented to me that he was a singular personage, and by his invitation I went to the jail, in April last, to see him myself. We were accompanied by Doctor Fosgate and another gentleman, who professed to be a phrenologist, and who appeared anxious to examine the prisoner. Whilst there, at the jail, Dr. Fosgate dressed the prisoner's wounded arm, and ordered a fire to be made near his cell, as it was then cold. His manners first arrested my attention, as I discovered that he appeared very different from other people, whilst his arm was being dressed. He appeared to be indifferent and insensible to pain. He exhibited no feeling whatever, when his wound was dressed. It did not seem to hurt him any, although the wound was severe, and appeared to be one that must have caused pain to any other person than the prisoner. His conduct was so strange that I had a curiosity to converse with him, if possible, with a view to ascertain what he knew about the crimes he was charged with. After Doctor Fosgate had concluded his duties there, as a physician, he left the cell, and I remained to make an examination in respect to his mental condition. I began by inquiring what took place at the house of Van Nest. I tried to get him to tell me about the affair, but I could not; and I was obliged to put him questions to which his answers, when he gave any, were generally Yes, or No. With but very few exceptions all his answers were in monosylables, simply Yes, or No; and these not very plainly spoken. I asked him if he went in at the front door, and he answered Yes; and at another time I asked him if he went in at the back door, and he gave me

the same answer. To both questions he said Yes; and I therefore concluded that he had no very correct idea about it. I asked where his hand was hurt—whether it was hurt in the hall; he answered Yes. I then asked if it was out at the gate, and to that he said Yes. I asked where he stabbed Mrs. Wyckoff—whether in the hall; he answered Yes. I then asked whether it was out at the gate, and to that he said Yes. I asked if he saw Van Nest when he went to the front door. He answered Yes. I asked what Van Nest said to him, but the prisoner gave no answer. I changed the question and asked him if he went into the house. He hesitated, and then answered Yes. I then pressed him to tell what Van Nest said to him. After a while he replied that Van Nest said, "If you eat my liver, I'll eat yours."

I was urging him to tell what Van Nest said, and once he gave the words: "If you're going to eat my liver, I'll eat yours," as near as I could understand him. Both answers seemed to be to the same import. I think I asked him when he killed Mrs. Van Nest; whether it was before he went into the house, and he answered Yes. When he told me what Van Nest said to him, I asked him in, the same connection, whether he stabbed him then. He answered Yes. I tried to ascertain from him how he got out of the house. I don't recollect precisely the question I put to him, but I recollect that I asked him at one time whether he went out of the front door, and he answered Yes; and at another, he gave the same answer when I asked him if he went out of the back door.

In my conversation I repeatedly tried to get him to continue along; to tell the story himself, by asking him to go on. Apparently he could not go on with any connected account of the affair. He several times repeated what Van Nest said about eating his liver, in nearly the same terms, but he did not continue the conversation, or the relation of his story. I asked him why he left there before he had killed them all. He said he hurt his hand. I asked him again, when he said, "My hand was hurt." Sometimes he said, "I couldn't kill any more." I asked him why he killed them, or what he killed them for. He answered by asking me "what they sent him to State Prison for, when he was innocent," or "wasn't guilty." He seemed agitated when he said this, trembled, and acted as if he was about to cry. He shook very considerably, and the muscles of his face were some distorted, but he did not cry, however. I told him that he had stolen a horse, and that was the reason why he was imprisoned. He denied it, and said he didn't steal it. I was at the jail a long time, and put to him many other questions to which I tried to get answers, but failed. It was evidently difficult for him to hear and understand. I asked him if he knew what he was in jail for. He said he didn't. I asked if he knew what they were going to do with him. He said No. I told him that he would be hung for killing those people, and asked him if he was not aware of it. Once he answered No; but did not seem to understand much about it. He appeared stupid, and when talked to about the slaughter of the Van Nest family, he didn't show any feeling;

nor did he show any when I spoke about what he probably would have to suffer for that deed—none whatever.

His appearance and manners were very singular indeed. He laughed frequently whilst we were there; laughed when we went into the cell, and laughed when we laughed; but it was not loud, it was only a smile. It was an unmeaning, unnatural smile, yet it was frequent in his cell. It gave to his countenance a singular expression, and was the same that I saw on his face during the preliminary trial. From what I saw I formed an opinion then that he knew nothing, and expressed it. I do not believe him sane. I don't believe he understands what is going on around him. He does not appear to be capable of distinguishing right from wrong, and, in my judgment, he would laugh upon the gallows as readily and freely as he did in his cell. He would probably know as much as a dumb beast that was taken to the slaughter house, as to what was to be done with him. If that state of mind and knowledge constitutes insanity, then he is insane.

I do not believe his appearance was a feigned one, nor do I believe that he pretended insanity to deceive me. I was there with him a considerable time; watched him closely during that time, and I am confident that I was not deceived. I was in court when he was arraigned. He then said, to the questions put to him by the district attorney, "No," and "I don't know," and leaned forward. Other indictments beside the one in this cause were read to him, or the substance of them was stated, at the same time, and the same questions put to the prisoner, to which he gave about the same answers. He appeared stupid then, and did not appear to understand what was wanted of him. I do not believe he has intellect, consciousness, or moral feeling enough to distinguish right from wrong. He might, perhaps, be taught a particular thing, yet he could not reason upon it at all. With my present views concerning his mental condition, I do not believe him a responsible being.

Cross Examination.—My opinion, respecting the mental condition of the prisoner, is firm and fixed; yet I think it would yield to evidence that went to prove his condition otherwise than as I have described it. I am aware of the verdict of the jury on the preliminary issue in this case, but it has not changed my opinion or caused it to waver. The jury had the benefit of my testimony on that trial. They found him capable of distinguishing right from wrong, but my opinion was and now is, variant from their verdict. I first saw the prisoner in April; can't tell whether early or late in the month, and from the appearance of his wounded wrist, as well as from rumor, I judged that it was soon after the murder. His wrist was quite sore when I saw it. At the time I went to the jail, my immediate object was to comply with the invitation of Dr. Briggs. I had theretofore declined to go, and until then I had never been. I also had another object, which was to satisfy myself whether the negro was really irresponsible. Upon arriving there, I thought his appearance indicated that he was irresponsible. It was

not such as can be easily described further than it has been, yet it was striking and unusual. I don't know as I had thought him insane before I went there. I had the impression before, that he was stupid and wanting sense, but had no personal knowledge whatever about him. After I had observed him awhile, I came to the conclusion that he was insane, or that he knew nothing; which medical men denominate a species of insanity, in cases where knowledge once existed.

Q. How do you know that the prisoner could not relate the occurrence at Van Nest's house?

A. I judged, from his manner, that he tried and did not, and I concluded that he could not.

Q. How do you know that he tried?

A. Because I think he was not capable of deceiving me.

Q. What particular indication did he give that he was trying?

A. I can hardly mention any one indication in particular. His whole appearance and manner at times were such as are usually manifested when a momentary effort is made.

Q. Suppose him to have been unwilling and not unable?

A. If unwilling, I don't think he would have tried.

Q. Did he know you?

A. I cannot say further than that when I asked him if he knew me he said No.

Q. Did he know Dr. Briggs?

A. He appeared to, and I think he said he did.

Q. When you first asked him what took place at Van Nest's, what did he say?

A. To my first question, I think he made no answer.

Q. To what question did he first respond?

A. He answered Yes, when I asked him if he went in at the front door.

Q. Did you infer that he was insane from that?

A. I did not.

Q. Did you infer insanity from his second answer?

A. I did not infer insanity, yet I noticed the inconsistency of the two answers?

Q. Did you infer insanity from the third answer?

A. I did not form any opinion from any one answer that he gave, but from all his answers, together with his stupidity and insensibility, I did.

Q. How do you know that he did not feel pain?

A. Because he indicated none.

Q. Are not some men more insensible to pain than others?

A. There is a difference, I presume, yet most men would manifest some sensation when such a wound was dressed.

Q. How do you know that he had no fear of being hung?

A. I derived my knowledge from what I saw. I came to the conclusion that he had not knowledge sufficient to appreciate or comprehend any thing that was said about his being hung.

Q. Do you not think he has some knowledge about a gallows?

A. Perhaps he has some if he ever saw one, but not much if any more than a brute.

Q. Did you regard his want of manifestation of pain as very curious?

A. I did, somewhat so. It was extraordinary to me.

Q. Did you ever see two persons who were precisely alike?

A. I never did see two that were, in all respects, precisely alike.

Q. Do you not know that some will endure pain with composure, when others cannot?

A. I do, and there is a great difference in people in that respect.

Q. Have you ever heard of people being burned at the stake?

A. History furnishes many instances of the kind.

Q. Was John Rogers executed in that way?

A. He was, if the accounts of his death be true.

Q. Was he a sane man?

A. I suppose he was.

Q. Do you believe that Commodore Lawrence was insane?

A. He was sane, no doubt.

Q. Do you believe Major Ringgold was insane?

A. I have no reason for believing that he was.

Q. Can you say whether brave men are less sensible to pain than cowards?

A. I cannot say, yet they may be, for any thing I know to the contrary.

Q. Do not men become indifferent of small wounds, who expose their lives in deeds of daring?

A. It is very likely that such men care less about them than some other men.

Q. May not Freeman be more insensible to pain than other men, and yet be sane?

A. I think he felt no sensation at all.

Q. What suggested the questions which you put to him in the cell?

A. The object I was trying to attain. I put such questions as occurred to me at the time.

Q. Did his laugh satisfy you that he was insane?

A. Not alone, nor did that strike me then, as it has since.

Q. Did the phrenologist examine his bumps in your presence?

A. I did not go in with him.

Q. Was it remarkable that the prisoner laughed in his cell?

A. I thought it rather more so that he should laugh than that I should.

Q. If his answers and his laughing did not lead you to believe him insane, can you tell what did?

A. His whole appearance and behavior.

Q. Did he appear the same as when he was arraigned?

A. Very much the same.

Q. What was there in his appearance and behavior at the time of his arraignment that made you think him insane?

A. Why, his position, the expression of his face, his inability to understand much that was said to him—all was strange, and altogether he did not act like a sane man.

Q. Did not you understand him?

A. I think nobody could have understood much, nor do I believe he could make any body understand better than he did me.

Q. Did you not understand him when in his cell?

A. I did not fully, yet I finally made out some of his answers, as I have testified.

Q. If a month after you saw him in the cell he made others understand him, what would you think of that?

A. I should think he was a different being from what he was when I saw him.

Q. Was not his arraignment like other arraignments?

A. It was not.

Q. Wherein was it unlike others?

A. When he was asked whether he demanded a trial, he answered No; and when he was asked if he had counsel, he said, "I don't know," and the court directed the clerk to enter a plea for him. I had never seen such an arraignment before, and—

Q. Would a guilty sane man, who knew that his offence could be proved, want a trial?

A. Some would; and I think any sane man would act and would answer differently.

Q. If a sane man did not know that he had counsel, would he not say as the prisoner did?

A. A sane man would be likely to know whether he had counsel employed or not.

Q. If he were in doubt whether he had or had not retained counsel, would he not express that doubt, if he said any thing?

A. He might express it, but not in the manner the prisoner did.

Q. Did his manner in court at the time of his arraignment indicate insanity?

A. It indicated that he had not changed for the better since I had seen him in jail.

Q. If a sane poor man were arraigned in court for a crime, and had not, and could not pay counsel, would he not say so?

A. He would be likely to speak the truth.

Q. Do you believe the prisoner was able to pay counsel?

A. By no means.

Q. Then did he not speak the truth?

A. So far as the question is concerned, I have no doubt that he did.

Q. You say he inclined forward; do not deaf people usually do so?

A. They sometimes do.

Q. He is deaf, is he not?

A. I have no doubt he is; very deaf.

Q. If he did not answer at all would you rather infer that he didn't hear or was sullen, than that he could not answer?

A. I cannot say; it would depend upon other circumstances.

Q. Would you infer that he was bewildered?

A. If I inferred that he could answer some questions, and that he had answered as far as he could, and indicated embarrassment, I might, under some circumstances, infer that he was bewildered. But I don't think he could understand much if he did hear.

Q. If he has been convicted by a court once, and by a court sentenced to the State Prison, do you not think he knows what a court is?

A. I think he may know that this is a court, but I don't believe he knows what the effect of a court is.

Q. Suppose him to have attended Wyatt's trial, last February, three days, would not that alter your opinion?

A. It would not as to his capacity now for knowing the character or powers of this court. If he were here I don't think he heard.

Q. Suppose he leaned forward and appeared to be listening?

A. I don't think he heard from where they say he stood, unless his hearing was better then than it is now.

JOSEPH L. RICHARDSON, (a member of the court,) was next called, and being sworn, testified: In September, 1840, I was first Judge of this county, and presided at the term at which one William Freeman was convicted of stealing a horse. I cannot positively state that the prisoner is the man who was then tried and convicted, but have not much doubt that he is. By reference to my minutes of that trial, I find that Martha Godfrey was the prosecutrix, and was a witness upon the trial. Marcus Doty and a colored man were also witnesses. It was proved on that trial that William Freeman was concerned in the offence, and he was convicted, and sentenced to confinement in the State Prison for five years.

Mr. Seward here proposed to read the minutes of Judge R. to the jury.

Objected to and objection sustained.

DR. BLANCHARD FOSGATE, called and sworn, testified: I am a physician and surgeon, and reside in the village of Auburn. I commenced practice eleven years ago. On Monday, the sixteenth day of March last, I was called to visit the prisoner, who was then in jail, and to dress his arm. It had been severely wounded in the joint of the wrist, with some sharp instrument, which

I presume was a knife. The tendons were cut off down to the radial artery. The artery itself was not wounded. [For *also* read *not*, in fourth line of page 49.] The wound was a bad one, and needed care. It had received one dressing then, but the bandages were displaced, and his arm and hand were considerably swollen. The adhesive straps were in their places, but had become very tight from swelling. I removed them and dressed the wound. In three days I called again and dressed it, and then there was considerable swelling. After the dressing it continued to get better.

Whilst there, several circumstances attracted my attention. At my first visit he appeared very morose and perfectly indifferent. I concluded that as there were persons continually coming to the grating and calling him names, that that was the reason of his moroseness. People standing there, so much darkened the grate that it was with difficulty I could see to dress his hand. On my next visit I observed that his demeanor had changed. He had an idiotic smile on his face, without any perceptible cause. He seemed to manifest no sense of pain. He seemed to have no conversational powers, and answered only in monosyllables.

I asked him if he had enough to eat. He said Yes. I asked what they gave him. He said pork. I asked what else. He said potatoes. I asked what else. He said bread. He had heavy irons on his feet. I inquired whether his feet were hurt. He said No. I asked whether there was pain in his arm from the wound. He said No. I asked how many blankets he had to sleep on. He said two. I inquired if his hand was better. I remember no reply, but he never complained. He never asked whether it was better; whether it would get well, or whether he would ever recover the use of his hand; nor did he even speak to me unless spoken to. Dr. Hurd asked him what he killed those folks for; whether he went for money. He replied, "They put me in State Prison." Dr. Hurd repeated the question. I heard no reply.

I look upon him as a person who is sinking into idiocy. I think he does not comprehend the idea of right and wrong—that he has no moral sense of accountability. As to his capacity to distiniguish between the consequences of killing a man or a beast, I should think it was immaterial to him; and that he was incapable of distinguishing between the moral consequences of the two acts. I think him incapable of comprehending his situation and accountability. My reasons for this opinion are, his insensibility to pain, for he must have suffered a very great degree of pain, judging from others in similar circumstances; his never inquiring relative to the prospect of his hand recovering, seeing he had to live by work; his irresistible propensity to laugh, under the circumstances in which he is placed, his laugh amounting only to a smile; his indifference to remorse or fear; and his indifference to sympathy. I recollect telling him one day, if he wanted any thing, and would let me know, I would get it for him; or if he was sick, and would tell

the jailer to send for me, I would come up; and although I spoke as kindly as I should to one of my own children, he made no manifestation of gratitude, nor did he say any thing in reply.

Cross Examination.—I have practised ten or eleven years. For about four years I had regular practice; the remainder of the time I practiced officially. When I was practicing without going out, by giving opinions as to patients or diseases, I was in the drug business. I gave opinions on any case brought before me. I was licensed to practice, and took my degree eleven years ago. Four or five years ago I became a member of the Medical Society in this county. My degree gave me authority to practice medicine.

I don't recollect whether there was any thing else, of note, on which I founded my opinion, without it is the similarity of his manner—the carriage of his head, motions and actions—to other insane persons whom I know. He holds his head in a dejected position, merely raising his eyes when he replies to questions. I do not recollect any thing else from which I drew the inference that he was insane. I presume he now holds his head in the natural position of persons in his condition of mind. I think a sane man, after murdering four people, would sometimes hold his head up. Whether he would be talkative or silent, would depend upon his disposition and habits, and the natural character of his mind. As near as I can recollect, I have given all the conversation that I swore to on the former trial. I think he said his hand was better. He tried to move it, at my direction. I asked how deep it was cut. He gave me to understand that the joint moved. I cannot say how he indicated it—whether by talking, or showing me his hand.

I swore before that I asked if he slept warm, and he said Yes. I at one time asked if he had enough to eat. I do not know whether he had pork, or bread, or potatoes. I infer insanity from every thing together; not from those answers alone. All the answers I knew of, were correct, with the exception relative to pain. I did not infer that he was a brute. I take him to be a human being, with some intellect, and that in a measure deranged. I consider idiocy a species of insanity. I know Dr. Brigham. When I know he is correct, I think he is good authority. When my own knowledge does not contradict his opinion, I think his authority as to insanity is of the very highest order. I understand idiocy to be partial dementia, or entire dementia, or fatuity. If Dr. Brigham thought differently, I should think the difference consisted mainly in a different classification of diseases.

If the law should say that idiocy was not insanity, then I should think that the law could not impose any rules or regulations upon the human constitution, as it is given by the Almighty, and would not make any difference with the fact. I think the fact of his indifference to pain, taken with every thing else, is evidence of derangement. A sane person, suffering as he must have done, would not have endured it without complaint. If it should be proved that he complained of pain, and requested a doctor, it would not change my mind. I said I didn't think he knew the difference between killing a man

or beast. He would know a man from a beast, by the external form, and by name. So far as any moral principle is concerned, I don't think he knows the difference between a man and a beast. The mere statement that he knows that they hang people for killing men, and not for killing a beast, would not change my mind. I do not suppose he thinks they hang people for killing beasts. I think that a sane man wouldn't smile, situated as the prisoner was. I believe he said No, when asked if he was crazy. By his indifference to remorse, I mean, he makes no signs of sorrow at his doings. I think he does not care for any thing he has done. He was only sorry that the child wasn't bigger. He does not care for killing this family; and that circumstance goes with the others to make me think he is insane. But rejecting this reason, I have knowledge enough of him to have this opinion. If he had been sane when I asked what I should do for him, I should think he would express gratitude, by look or word, or in some other way. If a dog were wounded, and in a sound state of mind, I think he would manifest sensibility to pain. The last time I dressed the wound I did not think it would require any more attention.

MARTHA GODFREY was next called and sworn as a witness for the prisoner. She testified as follows: I reside in Sennett, and have seen the prisoner. He came to my house last March, at two o'clock P. M., and before the murder of the Van Nest family. He came in and sat down, and wanted to know if this was the place where a woman had a horse stolen five years ago. I told him it was. He then said he had been to prison for stealing it; but that he did not steal it. I told him that was something I did not know any thing about; that he had been tried and found guilty of it, and sent to prison. He seemed deaf, and complained of being so hard of hearing that he could not hear. He wanted me to get very close to him and speak very loud. One of my neighbors just then came in, and I told him to talk to Freeman, for I could not. It was Joseph Johnson that came in. He asked Freeman what he wanted. He did not make much of an answer, but said he did not know, and sat awhile. Mr. Johnson asked whether he wanted the horse, or what he did want. He did not make any answer, but sat there quite awhile. I then asked him if he wanted any thing to eat. He said he didn't know. I however gave him some cake to eat. Johnson spoke to him again, asking him if he wanted the horse. He sat awhile, looked around, smiled, and said he didn't want the horse now. He said he had been to prison for stealing the horse, but didn't steal it; and wanted a settlement. He said he had been to prison five years.

I had a horse stolen five years ago, and was a witness against Freeman on the trial for stealing it. I did not then know John G. Van Nest, nor any of his family, nor any of the persons in his house where the murder was committed. I never heard that any of them were concerned in the trial in any way. They were in no way related to me or my family. I never heard of them until after the murders were committed. He remained at my house

about an hour. The witnesses against Freeman on the trial for stealing my horse, were Marcus T. Doty, and a negro, named Jack Furman, I believe. The trial was in this court house.

My husband's name was John Godfrey, junior, and he was in no way related to the Wyckoffs, Van Nests or Van Arsdales. The next morning after the murder there were horse tracks in my yard.

CROSS EXAMINATION.—There was company at my house the night of the murder, so that I did not retire that night until after ten o'clock. After we retired there were no lights burning at my house to my knowledge. A brother of mine, and a young man who boarded with me and went to school, were there. The next morning after the murder of the Van Nest family, we saw horse tracks where some one had been. There was snow on the ground in my yard where the tracks were. The afternoon when the prisoner came to my house, was during the trial of Henry Wyatt, for the murder of James Gordon. I did not think of his being crazy then. When Freeman was tried here in order to see whether he was insane or not, I was here at court as a witness and saw him. I see him now in court. He looks different from some colored men. Now he smiles and looks silly. When he was at my house, I was afraid of him.

[Here the counsel read the minutes of his former conviction.]

JOHN DE PUY was next called, and being sworn, testified: I was brought up in Owasco; moved to Auburn fourteen years ago. My wife is a sister of the prisoner. Her maiden name was Caroline Freeman. Some years ago I worked for Peter Wyckoff, and lived in a little house west of his own, but on his farm. From there I moved to Auburn, and have lived here ever since. The prisoner has lived with me some. When I went up to the Lake he lived with me, and also after I came to Auburn; but I don't now recollect how long. He was then an active, smart boy. He was as lively as any other you could find. He was playful, talkative, and a good boy to work. Set him to work any where, and he would do it. He was sociable, and understood himself, and had some learning. He could read in the spelling book, pretty well. He could read it off in reading, smooth and decent. I have heard him read a good many times. Up to the time he went to the State Prison he made my house his home, and I saw him a great deal. I knew of his attending balls and parties.

Whilst he was in prison, I saw him five different times. His mother requested me to go. His mother told me that she had heard that somebody had struck him on his head, and that it was going to kill him. He had been in a year before I first saw him. I didn't speak to him. He was carrying something on his back like a knapsack, and walking back and forth in the yard. He would walk a little way and turn round. I perceived an alteration in him. He didn't appear as he did before he went to prison. He appeared stupid. Took no notice of any thing. I don't know whether he knew me or not. I was near to him; don't think he knew me; took no no-

tice of me. I saw him after that in prison; when he was at work and when he wasn't doing any thing. I thought he didn't appear to be in his right mind. I thought there was something the matter with him. I don't think he was in his right mind; and told my wife so.

I saw him the day he came out. Knowing that his time was out, I went over there to fetch him home with me. I waited in the prison hall till he was dressed to come out. When he did come, he passed me as if he didn't know me. He said nothing; I went up to him, touched him and asked if he knew me, and he kind o' laughed. I fetched him out with me. He got some money—four half dollars, I think—which was given him by the officer in the clerk's room. When he came along as far as Applegate's carriage shop where I was at work, he sat down on a pile of boards, whilst I was helping raise a building. He sat there, and acted very stupid and dull, and said nothing. They asked me "what dam'd fool that was, who was sitting there." I knew and I remembered it. He staid there a good while, sitting down. He didn't know the value of his money. He thought his half dollars were quarters. He wanted a cap to wear, and we went to a hatter's shop to get one. I picked out one, for which they asked four shillings. Bill threw down two halves for it. I took up one of them and handed back to him and told him to go with me. After he came out he told me that he hadn't paid for his cap; that they would make some fuss. I told him he had, and that it was all straight there. He took the pieces to be two shillings each. After he got home, I talked with him and asked how they had used him in prison. He said they gave him enough to eat, and sleep on; and told about a fuss he had there. He said a keeper named Hoskins kicked him and knocked him around, and that he thought he wouldn't stand it; that he warded off the blows and weighed out Hoskins one. He said he struck Hoskins with his left hand and faced him around, and then he came the butcher's chop on him; that he dropped his left hand over his face, and struck him with the right. That's what he called the butcher's chop. He said Hoskins fell and hallooed murder; that prisoners took him off.

After this, the prisoner told me about Captain Tyler, a keeper in the prison. He said Tyler used to strike him and kick him generally when he passed him; that he made up his mind that he might just as well be dead as alive, because they were constantly knocking and pounding him, in the prison. He said he had a difficulty with Tyler, and that Tyler struck him, or something; and that he struck back. He said that Tyler called the prisoners, who came and clinched him, and that Tyler then took a piece of a board and struck him across the ears; and that was the reason that he couldn't hear; for it knocked the hearing off, so that it never came back to him again. I asked him if they did any thing for his deafness. He said they did; that they put salt in his ear; but that it didn't do any good; for his hearing was gone; was all knocked off.

He told me about another affair of his in the prison, when he said they

threatened to put him back there again when his time was out. He said he broke a knife in the prison, for which they made that threat. Bill then asked me if they could put him back there for that. He said it was an old knife, and that he broke it while eating.

I know Jack Furman, and knew him when Bill went to prison. I believe his right name is John Willard. I heard about the horse being stolen in the time of it. They said Jack stole the horse, but the prisoner was taken up for it. I know he was at my house all that night that the horse was said to be stolen. [The last sentence was objected to and excluded.] Jack is now in the State Prison. Bill frequently inquired for Jack after he came out of prison. I told him he was in there, a convict. He said he had not seen him. He said he had been there five years for nothing and wanted his pay for it. He said several times that it was wrong for them to send him (the prisoner) to the State Prison; that they sent him for nothing, when he wasn't guilty. He wanted to see Jack, about sending him to prison, and said he wanted pay for his time there. He said he wanted pay from the folks. I told him the folks were gone away. He asked if there were any Esquires here, and said he wanted a warrant, for he must have his pay. He said he must go down and get a warrant, for they must pay him; that he couldn't make any gain so. I told him who the magistrates were. I named Bostwick and Paine. He went down to get a warrant, but came back and said he couldn't get one; that they told him to come again. He went again, and when he came back he said he'd got it all fixed, and wanted me to go down and see that he got his pay right. Then again he told me he couldn't do nothing with 'em—couldn't get nothing. He said they would cheat him all the time, and he couldn't live so. Once he went away somewhere two or three days and came back. In November I went to Skaneateles, and Bill went away to work. He soon came there to see me. He'd been at work and boarded with Adam Gray. He said to me that he'd been sawing wood for a Mr. Conklin, a harness maker, for which he was to give him three shillings, but wouldn't give him but two; that he throwed the two shillings at him, and came to see me to see whether he should whip him, or what. I told him not to do it; that they'd put him in jail if he did. He said he couldn't take him up; that there wasn't any law for him; they wouldn't let him have a warrant, and they cheated him all the time. I went to see Conklin. After that I told him to take the two and I would give him another. He said he couldn't live so; he couldn't make any gain so. He said, likewise, that there was another man that wouldn't pay him. His name was Murfey. I went to see Murfey, but he said he had paid him all he agreed to. I gave him the balance, because he thought he was wronged. He was around here after that, and got his arm cut once. He said he fell on his axe. He lived at Mary Ann Newark's before the murder, until his arm was healed up. His mind last winter was very unsteady. Half of the time he didn't know what he had done. He didn't seem to know where he'd been, and yet he'd run back and

through the village. It was said they'd given him liquor. He acted unlike any body in their right mind; worse than before he'd drank, but he acted bad enough any time. When he went any where he run pretty fast. He would start up and then turn and run right back. Sometimes he ran up a ways and then right back, without any reason for it. On such occasions he never said any thing unless spoken to. He never commenced any conversation with any body. He'd sometimes kind o' smile. He talked to himself and tried to sing.

Sometimes he would get up nights. I have seen him up nights a number of times. He's got up two or three times in a night; would stay up perhaps fifteen minutes, and sing a part of the time, and dance, and be around in the room below. He was talking one night and said, "By G—d, I'll see you out." He was alone in the room. Sometimes he wouldn't dress himself. He didn't see any thing when he had it in his hand sometimes. He would try to read and asked me to hear if he read it right; but he couldn't read right. He'd call it one way when it was another way in the book. When he was up nights I would sometimes speak to him, and ask what he got up for. He'd say, "didn't know." At such times he'd get up and be around a spell and go back to bed again. He acted so very strange that we talked about it at the house. He was insane before he came out, I think, and he has been insane, in my opinion, since he came out of prison. After he came out he wouldn't talk as he used to. He wouldn't commence, and only talked when he was spoken to.

I know Sidney Freeman, the prisoner's uncle, and I knew his aunt, Jane Brown. They were both crazy, and Sidney is crazy now. He got crazy in prison. Right away after coming out of prison he would get up nights, and I could see through the stove pipe hole. He had not been drinking then. I took care that he should not get any liquor. In February I heard they'd been giving him liquor, but I never saw him drink. I told them at Gale's grocery not to let him have it, for he did not know what to do with himself. When he was arrested, I said he ought to be arrested. I was told by Hersey that he threatened my life, but Bill never made threats to me.

He often spoke about his pay, and said there wasn't any law for him, and he couldn't get any warrant. I know his mother, Sally Freeman; she lives in town. I have said that my wife is her daughter. She wanted me to go and see Bill when he was in prison. I did not tell her, but I told my wife when I came back that I thought he was crazy. When his time was about out, his mother wanted me to go and get him home, and so I went. I knew John G. Van Nest, and so did the prisoner. I knew of no difficulty having taken place between him and the prisoner.

Cross Examination.—Freeman lived with me when I lived up there near Van Nest's house. I don't recollect of ever putting Freeman in a well and keeping him there all day. I don't recollect of saying that he was a good enough boy if he would let liquor alone. I have said I was glad he was

arrested because any man ought to be arrested who had done such a thing as he had. I was told that they had catched him, and I said I was glad of it. I have not said that he pretended to be crazy but was sane, as I remember. I never said any such thing in substance. I have said he was a great deal better when he let liquor alone. I didn't say he was perfectly sane when he let liquor alone.

Q. Have you said you were glad he was arrested because you were afraid of your life?

A. Not in them words.

Q. Did you tell Vanderheyden that you were afraid of your life?

A. I may have told him my wife was afraid.

Q. Did you say that you was afraid to have him at your house, and drove him away?

A. I might have said something like that.

Q. Were you at a dance with the prisoner the night before the murder?

A. I was at Hersey's that night pretty early, and the prisoner was there.

Q. When did you leave?

A. Along about eleven or twelve o'clock.

Q. Had the prisoner any knives then?

A. I heard he had in his bosom.

Q. How late did he stay?

A. He was there when I came away. He was standing out door with Hersey.

Q. Did you say to Asa Spencer that he was no more crazy than you were?

A. I don't recollect of saying so.

Q. Did you not in substance say that?

A. I have said he was ugly, but I did not say so then.

Q. What did you say?

A. I can't recollect now.

Q. Why can't you recollect what you said to him?

A. I can't recollect when I'm bothered.

Q. Did you say to Thomas Munroe, during the present trial, that he never was crazy, but was dam'd ugly?

A. I don't recollect of saying that.

Q. Should you recollect if you did say so?

A. I ought to recollect if I did.

Q. Did you not swear on the last trial that you had not said so?

A. I guess I did—believe I testified so.

Q. Did you not say, shortly after Freeman was arrested, and before he was brought to Auburn, that you were glad he was arrested, and that you were afraid of your life?

A. I might have said something to that effect, but not in them words.

Q. What words did you use?

A. I said I was glad he was arrested, but I didn't use the words about being afraid of my life?

Q. Well, what did you say?

A. I don't remember what I did say.

Q. Didn't you swear on the former trial that you were afraid of your life?

A. I don't know but I did.

Q. Did you ever see the prisoner drink spirits?

A. I have seen him when he was going to drink, but I took it from him.

Q. Did you not say, in front of the law office of Mr. Hall, that he had threatened your life?

A. I don't know but I did, and I don't know as I did; I wouldn't swear that I did, or did not.

Q. Have you not seen Freeman drink what you believed to be spirits?

A. I've seen him drink beer; whether there are spirits in that or not I can't say.

Q. Have you not seen him drink spirits; answer that?

A. Well, I've seen him drink that that I thought was spirits a number of times before he went to prison, but I don't know what he drank and cannot tell.

Q. Have you seen him drink what you believe to be spirits since he came out of prison?

A. I don't know but I've seen him drink what might be spirits.

Q. Have you not seen him a dozen times?

A. No; I have not.

Q. Have you not several times?

A. I may have seen him two or three times; how many I cannot say.

Q. Have you not seen him intoxicated?

A. I saw him once when I thought he had been drinking, after I came back from Skaneateles.

Q. Where was he?

A. Down in the village here; he and Jim Black had been sawing wood that day.

Q. Did you swear that you had never seen him drink any thing that looked like spirits?

A. Water looks like gin, and like whiskey.

Q. I desire you to answer the question?

A. I don't know whether I did or not.

Q. Did you swear that you never saw him but once when you thought he'd been drinking?

A. I believe I did; think I did.

Q. Did you not stop some one from giving him liquor one day?

A. I stopped him twice; can't say whether in one day or not.

Q Did you not say that it was at Gale's?

A. I saw him at Gale's and shook my head at 'em to prevent 'em from giving it to him.

Q. What did Hersey say to you about threats?

A. He said Freeman told him he was going to kill Van Nest and me too.

Q. What time of day was this running that you speak of?

A. It was in the forenoon; never saw him run so in the night.

Q. Had he not been drinking then?

A. I don't know as he had.

Q. Did you turn him out of your house?

A. I didn't.

Q. Have you not said so?

A. I don't know but I have said he was turned out. I may have said so for the reason that my wife was afraid of him.

Q. Were you not afraid of him?

A. I never was.

Q. Did you not say you was?

A. I did not at that time.

Q. How long was Freeman engaged in telling you about his affair in the prison with Hoskins?

A. It took an hour.

Q. Did he speak of it himself?

A. No; I asked him.

Q. Why did you ask him?

A. Because I had heard of a fight between 'em.

Q. How long did it take to tell of the fight with Tyler?

A. It didn't take so long.

Q. Did he begin to tell about that?

A. No; I had heard that he was struck by Tyler in the prison, and knocked so he wouldn't live, and I asked him.

Q. How long did it take for him to tell about that affair?

A. I can't tell.

Q. Well, about how long?

A. I should think near half an hour.

Q. You say that when you saw him in prison, you thought he was not in his right mind. How did you know that, if you didn't speak to him?

A. Well, I thought so from his actions and the way he looked.

Q. Was his dancing in the day or night time?

A. I don't think I've seen him dance in the day time since he came out.

Q. Have you told the prisoner what you would swear to?

A. I never have.

Q. Have you not talked with the prisoner's counsel about it?

A. I don't know that I have, only to Mr. Seward. He asked me what I knew of the prisoner, and I told him.

Q. What did you tell him?

A. I don't remember now what I did tell him.

Q. How many times have you talked with him?

A. A couple of times, I guess.

Q. What did they say to you?

A. They asked me questions.

Q. Did they write down what you told them?

A. I don't know; I suppose he or Mr. Morgan did.

Q. Have you ever told Freeman that Van Nest swore against him on his trial for stealing the horse.

A. I never did.

Q. Did you ascertain that the prisoner did throw the quarter of a dollar back to Conklin?

A. Conklin told me he did—that's all I know.

RE-EXAMINATION.—Q. How did you happen to see the counsel for the prisoner?

A. Mr. Seward sent for me to come and tell him what I knew about Freeman.

Q. Have you talked with the prisoner since he was in jail?

A. I have a little—I hallooed through the grates a few words.

Q. What did you say?

A. I asked how they used him, and he said pretty well.

Q. Why did you ask that?

A. I reckoned he didn't know good usage from bad.

Q. What else did you say?

A. I asked if he had enough to eat.

Q. What did he say?

A. I don't know. I couldn't understand.

Q. Have you ever been into the jail at any other time?

A. No, sir.

Q. Did Freeman ever say any thing to you about Van Nest's folks?

A. He never did.

Q. Did Freeman say any thing there at Hersey's?

A. Not as I heard.

Q. Did you speak to him?

A. I asked him if he was going to dance, and he smiled and shook his head.

Q. Was Freeman angry at you?

A. Not to my knowledge, until Hersey told me so.

Q. Did Freeman dance that night?

A. No, sir.

Q. Did he dance before he went to prison?

A. Yes, he could sing songs and dance; but now he won't sing but part of a verse, and then be off on to another.

JOHN R. HOPKINS, called and sworn, testified: I have some knowledge of this prisoner. It commenced, however, after the Fleming murders. The excitement occasioned by the affair was very great, and when he was arrested and lodged in the jail, I felt some interest in his case. I had understood that he was a man of very weak intellect, and was anxious to ascertain how that was from personal inspection. A week or ten days after the murders, I went to his cell and conversed with him. I became satisfied that his mind was very weak indeed. I endeavored to ascertain what his powers of mind were. Asked him if he knew me. He said he did not. He did not appear to recollect that he had ever seen me. I tried to bring Mr. Hotchkiss to his recollection. I asked the prisoner if he ever went to Sabbath school. He said he had, after making several efforts to get him roused up so as to seem to know what I was saying. I asked him if he was in Mr. Hotchkiss' class, and pointed to Mr. H. at the same time. He either said "no," or "I don't know." I asked what he learned at Sabbath school. He said, "The good." I asked if he learned about God. He said Yes. I asked if he also learned about Jesus Christ. He said Yes. I asked if he learned about heaven. He said Yes. I then endeavored to ascertain what his ideas were about them—whether he knew who God is; but could get no satisfactory answer from him. He seemed puzzled. He mumbled something which I could not understand, and shook his head. He did that to a great many of the questions I put to him. What I could gather from him I must, therefore, give in general terms to the court and jury, if at all. I got an answer from him to my question about God, but I have difficulty in giving his words. The effect of it was, that God is above. I asked if God was a superior or supreme being, to which I could get no definite answer. About heaven, and his idea of it, I put a variety of questions, and the effect of his answers was that he knew nothing about it. The sum and substance was, that heaven was above. I asked him if he knew any thing about Jesus Christ. He said he came to the Sunday school once. I asked what he did. He answered, "Don't know." I asked if he took a class. He said, "Don't know." I asked if he preached or talked. He said, "Don't know." I then turned his attention to the idea of pay. I asked if he had got his pay for the time he was in prison. That roused him up, and he looked comparatively intelligent. His whole countenance brightened. He said No. I asked who ought to pay him. He said, "All of 'em." I asked whether I ought to pay him. He looked up at me with a flash of intelligence in his face—looked intently, conveying an answer by the look, and said nothing. I asked if this man, (pointing to Hotchkiss,) ought to pay him. He looked at him as at me, and said, "Do what's right," or "Well, do what's right." We then spoke to him about his trial, and enquired of him whether he was to be tried for his offences. He became stupid and dull again, and we couldn't get any thing out of him. He made no answer that I know of. He seemed exceedingly stupid and dull upon that subject. He satisfied us that he knew nothing about

the trial. He was asked if he prayed. He answered Yes. After that I turned away from him, and did not keep the run of his answers. They asked him if his wrist had got well. He made no reply. I looked at his wrist, and took his hand, and asked who cut it. He said, "A woman." We tried his capacity to read. I saw a testament there; took it up and asked if he could read. He said Yes. I gave him the book and asked him to read. He took it, and mumbled over incoherent sounds, but a small part of which could I understand. In the sounds I recognized the words "God," "Father," "Jesus Christ," "Mercy," and others that I cannot now remember. These words were unconnected. His attention was directed to a place in the book, and I looked over him. He pointed with his finger, as if reading, and mumbled over the same. There was no such matter there as he seemed to be reading. I watched him sharply to discover any simulation, but I couldn't. There was no deception. If there had been, I should have detected it. As to his mind and intellect, I think him a little above the brute. On some subjects he has a little knowledge of right and wrong. With reference to some things, I don't think it unsound—as to others, I think it sound as far as it goes; and as to some, he is evidently deranged. I have no question of it, by comparison with others whom I know to be deranged. He is insane on the subject of pay. That idea is the controlling influence of his mind. On no other subject is he awakened at all.

Cross Examination.—I cannot tell how long the prisoner has been in this state. My opinion is that he has been so since he came out of prison, and that when he came out he was insane. I don't claim to be infallible, but I have the utmost confidence in this opinion. Some of my inquiries were at the first visit and some at the second. At the second visit I became satisfied. I had heard that this was the state of his mind, and I found it to be so. My opinion was established by the examination.

Q. Have you not been very active in behalf of the prisoner?

A. I cannot say that I have. I have talked about him some, and made inquiries of others.

Q. Have you not taken especial pains to make these inquiries?

A. Not especial pains. I have made inquiries, however.

Q. Did you not make them with a view to his defence?

A. I did not. I made them in order to satisfy myself.

Q. Did you tell those of whom you inquired that he was insane?

A. From what I had heard and seen, I concluded that he was insane on the subject of his pay, ever since he came out of prison.

Q. You have no doubt of that?

A. I feel perfectly satisfied of it, and my subsequent investigation has not caused me to doubt it a particle.

Q. You have no doubts now, I suppose?

A. I have not a doubt of it.

Q Were you called as a juror in this case?

A. I was.

Q. When called as a juror, did you swear on that stand that you had formed no opinion as to his sanity or insanity at the time he committed the offence?

A. I cannot answer without detailing the circumstances.

Q. Do you remember that you were challenged on the ground that you had formed and expressed an opinion?

A. I remember that I was challenged.

Q. Do you remember swearing that you had an impression, but no opinion?

A. I was asked if as a juror, I should regard that impression, and I said No. I was then asked if Churchill should come and swear contrary to my own knowledge, whether I would believe my own senses or his testimony. Then I was asked if as a juror, what I would do.

Q. Well, what further did you say?

A. I don't choose to be criminated, even apparently, and can give no other answer.

Q. Did you swear that you had formed no opinion as to whether he was sane or not, when he committed the offence?

A. My answer is, I cannot tell—I am unable to tell.

Q. Cannot tell what?

A. I say that with regard to my examination as a juror, I answered differently from what I answered in another capacity. I do not now recollect what questions, precisely, were put to me.

Q. Does not your inability arise from disinclination?

A. My answer is, I don't recollect.

Q. What is your occupation?

A. My daily occupation is various. I am engaged in manufacturing; but sometimes attend court.

Q. What did you first say to the prisoner at the first interview, from which you discovered insanity?

A. I don't know that I can say.

Q. What was the question put by you to the prisoner about his wrist?

A. I asked him how he hurt it, and he said a woman cut it.

Q. I asked if he knew her?

A. He said he did not.

Q. What next?

A. I asked if he had ever seen me, or if he knew me.

Q. What did he say?

A. He said he did not.

Q. Did you not expect to testify on this trial?

A. I did not.

Q. Did it not occur to you, that you probably would be called as a witness?

A. I am not able to state except with some degree of probability, from the fact that this trial was near.

Q. Did not Gov. Seward speak to you about this case?

A. He did; or we had several conversations about it.

Q. Did that not lead you to expect that you would be called?

A. It perhaps did, when taken in connexion with the approach of the trial.

Q. Did you tell him what you would testify to?

A. I did not. I only conversed with him about the prisoner, and the peculiarities of the case.

Q. Several times, have you not?

A. Yes, several. I am unable to say how many; but have conversed with him frequently.

Q. Have you ever studied Theology?

A. I have turned my attention to it somewhat.

Q. Did you expect that the prisoner was familiar with that subject?

A. I talked with him about the Supreme Being; as I wanted to learn whether he was accountable and responsible for his crime, in the eye of abstract justice and right.

Q. In law, also, I suppose?

A. I am not sufficiently acquainted with law, to tell whether it was any part of my plan to see whether he was legally accountable.

Q. How do you test accountability?

A. I supposed that the extent of his knowledge was the measure of his accountability, legally as well as morally.

Q. Suppose him profoundly ignorant of all those subjects; would you consider him accountable?

A. If he wanted all knowledge, I should consider him wholly irresponsible.

Q. Did you think Theology was the proper subject upon which to test his knowledge?

A. I conceived that the test I put was as fair as any I could put.

Q. What did he say about Jesus Christ?

A. He said that Jesus Christ came to Sabbath school.

Q. How was his memory?

A. It was very sluggish and inactive.

Q. Did you consider that his failing to remember you was evidence of insanity?

A. I did not.

Q. You say he brightened up on the subject of pay; is that a rare thing?

A. It is very rare to find people who will brighten up on the subject of pay, in the manner and to the degree that he did.

Q. Did his brightening satisfy you that he was insane?

A. I think he was deranged on the subject of his pay.

Q. How did it satisfy you?

A. His manner on other subjects, contrasted with his manner when this subject was spoken of, convinced me that there was something extraordinary on his mind; that he was under the delusion that he was entitled to pay.

Q. Do you know that this is common with convicts?

A. Very many of the prisoners say they are entitled to pay, but do not think that they are legally entitled to it.

Q. How do you know that?

A. From their talking about it voluntarily, and in the manner that some do.

Q. Didn't Freeman talk about it voluntarily.

A. No; I inquired about it.

Q. Would the volunteering prove that there was no delusion?

A. No; not that alone. Freeman indicated a mania on that subject, in his whole appearance and manner.

Rev. John M. Austin, sworn, testified: I reside in Auburn, and am clergyman of the Universalist church in this village. After the prisoner was arrested for the murder of the Van Nest family, I visited him several times at the jail; sometimes alone, and sometimes in company with others. I found him to be a man of very feeble intellect, and quite stupid. I endeavored to examine him with a view to ascertain what degree of knowledge he possessed, and what his mental condition was. The first time I called, was the twenty-sixth day of March; but I had several interviews, and it would be impossible for me to distinguish the subjects of conversation at each interview. The principal object of my first inquiry, was to find whether there was any connexion between that murder and the Wyatt trial. Our questions were first in regard to the murder. I inquired of him whether he knew Henry Wyatt, in the State Prison. He answered No. I asked if he knew that Wyatt killed a man there. He answered that he knew, or heard, a man was killed. I asked if he knew who killed him. He said No. I asked if he was in the court house during his trial? He answered No. I asked if he knew that Wyatt had a trial. He answered No. I asked if he knew what defence was set up on that trial. He answered No. I asked if he knew the result of that trial. He said No. I asked if the result of that trial had any influence on his mind in committing this murder. The answer was No. I asked if he probably would have killed these people if Wyatt had had no trial, or had the result been different. He answered Yes.

I then put questions to find his motives in killing that family. His answers were broken and incoherent, but they invariably had reference to his being in prison innocently. I asked if the persons he killed, had any thing to do with putting him in prison. He answered No. I asked why he killed that particular family. I got no direct answer; except something about being put into prison wrongfully. I asked if he thought it right to

kill people who had no hand in putting him into prison. To this, his answer was in effect, "Shall do something to get my pay." At that, or some other time, I heard some one ask how much pay he asked; and his answer was, "Don't know." I asked why he entered that particular house. He said, "I went along out, and thought I might begin there." I asked what question Van Nest put to him when he went in. He said, "He asked me what I wanted." I asked what he said in reply. He said, "I came in to warm my hands." I asked if Van Nest said more to him before he stabbed him. He said, "He said, if you eat my liver, I'll eat yours."

I then asked about his religious advantages. I asked whether he had ever been at church. He said, "Yes, some." I asked if he had ever been at a Sabbath school. He said Yes. I asked where. He said, "To First church." I asked how he became deaf. To this, I recollect he gave the longest reply that he gave, and the strongest. I can't give his words, but they were something like this: "It felt as though stones dropp'd down my ears;" or this, "As though the stones of my ears dropp'd down." I could not get the whole of it—it was so incoherent; and I was pained to hear him talking; and that I could not in any way gather his meaning about his deafness.

During the most of my subsequent visits, the conversation was chiefly on religious subjects. I tried to convince him that his acts were wicked, and I asked him if he did not think he ought to ask forgiveness of the Saviour for the act; but I could get from him no answer that indicated that he comprehended me. I saw he was unmoved by any of those questions, and I abandoned the attempt to impress him with the nature of his guilt. While talking to him, I asked him if he ever prayed. He said Yes. I asked when. He said, "When I was a boy." I asked if he had ever prayed since he came out of prison. He said No. I asked if he had prayed since he committed this act. He said No. I then said that he should pray fervently, and asked him to promise me that he would. He answered, "I will." I asked if he would like to have me pray with him. He said, Yes; and I did pray with him in his cell. I inquired of him if he would like to have a testament. He said Yes; and said that he could read. I soon after that, carried a testament to him. At some interview, he said something about "my work;" but I could not gather what it was. Here I think it due to myself, and the position I occupy, to say that when I first visited this prisoner I had no reference to any trial, or to any testimony that may be given here. Nor was that visit made with the purpose or expectation of testifying. I was intent upon trying to do him good, and did not note his language as particularly as I might have done, perhaps.

His countenance has, from the first interview, presented a vacant appearance. He sometimes smiled when there was no occasion for it. That smile is the same I have seen upon his countenance here in court, and which others have noticed. As to his reading I found that he was unable to do so.

When I discovered this I was astonished, as he had before then told me that he had read in the testament, which I had presented to him. I found that when directed to read, he opened the book, fixed his eyes intently, bent his head over and pointed with his finger, as would a child three or four years old. At one time he opened to a chapter commencing with, "In those days came John the Baptist." He pointed with his finger, and said, "Christ, or God, Moses, good, come, man." These words were uttered after a strong apparent effort.

I saw him try to count, and the effort to do so was peculiar. He would spread his fingers apart and count, in a peculiar tone of voice, up to twenty-five; once he got to twenty-seven, and then said, "twenty-eight," and then, "eighty," and then wandered about. There was on his part an eagerness to read and count.

I put to him other questions about killing the family. I cannot give his language in reply, yet he referred to his being imprisoned in the State Prison wrongfully. I asked if he thought it right to kill the Van Nest family, and his answer was about the same—it referred to his imprisonment. When I asked why he killed the child I could get no reply which I could understand. I don't think he was able to assign any reason. I asked why he went that night. His reply was, "I don't know; the time had come." I asked why he did not enter another house, or why he entered that. His reply was, "I went along out, and thought I might begin there." I asked what Mr. Van Nest said to him when he went in. He said, "He asked me what I wanted." I asked what else Van Nest said. He replied that Van Nest said, "If you eat my liver, I'll eat your liver." I asked about his deafness, and how he became so. In a very incoherent manner he replied something about stones dropping into his ears. He said, "the stones dropped down my ears," or "the stones of my ears dropped down." I put questions to find his motive for killing that family. His answers were very broken and incoherent, but invariably referred to his being in prison innocently. I asked if the persons killed had any thing to do with putting him in prison. He answered No. I asked if he knew their names. He said No. I asked why he killed that particular family. He gave no answer, except something about being put in prison wrongfully. I asked if he thought it right to kill people who had no hand in putting him in prison. His reply was incoherent, but I gathered something like this, "shall do something to get my pay." I asked how much pay he thought he ought to have. His answer was, "Don't know." I asked if it was right to kill those innocent persons for what had been done by others. He said, "They put me in prison." I asked who did—the Van Nest family? He answered No. Then I asked again why he killed them; whether he thought it right to kill that innocent child. I understood from his gestures in reply, that he was in a labyrinth from which he was incapable of extricating himself. I asked again how he happened to go that particular night. His reply was, "The time had come." I asked again why he

entered that particular house. His reply was, "I went along out, and thought I might begin there." I asked if he ever called on Mrs. Godfrey. He said, "I went to Mrs. Godfrey to get pay, and she wouldn't pay me." I asked again about it. He continued, "I went to the 'Squire's, and they wouldn't do nothing about it." I put him various other questions which I cannot now recall; some of them were about his affray in the State Prison. He said something about the keeper. It appeared that he had had some difficulty with a man by the name of Tyler. I asked why he intended to kill the keeper. He said, "I was called up to be flogged." I asked what he had been doing. He said, "Because I wouldn't work." I asked why he wouldn't work, and to that he made an answer that made an impression on my mind; it was, "Because I went to prison innocent, and thought I oughtn't to work." I don't say those were his words, but those words convey the idea. I cannot undertake to be exact as to his words, but give them as near as my recollection enables me to do so.

He stated in answer to my questions, that Mr. Tyler struck or kicked him first, and that he kicked or struck back; that convicts were called to assist; that he attempted to run, and as he was running past a bench where there was a knife, he picked that up to defend himself with; that then the convicts laid hold of him; and that in the affray Tyler struck him with a board. The remark that, "I thought I oughtn't to work," led me to believe that during his imprisonment he dwelt much upon the fact that he was wrongfully imprisoned, and, therefore, ought not to work. His assertion that Van Nest said, "if you eat my liver, I'll eat yours," led me to believe he was insane; for no such remark could have been used by Van Nest under such circumstances. Another ground of my belief was his confused story about losing his hearing; his attempt to describe it, which he was utterly incapable of doing. He said, in reply to some questions, "if they'll let me go this time, I'll try to do better," or something to that effect, which showed an entire want of rational appreciation of the nature and enormity of his deeds, and an entire ignorance of the consequences of his act. I do not believe any man of his age, possessing a sound mind, could suppose that he could be allowed to escape all punishment, simply by promising to do better. He attempted to read and count, and appeared to suppose he could read and count correctly, when he could not. I asked him whether he could read, to which he answered Yes. I handed him a testament. This I did several times, and he evidently could not read. At subsequent visits I asked him if he had read his testament. He answered Yes. He could not count more than about twenty regularly. He seemed to know some of his letters, but could not combine them. His inability to do what he supposed he could, was another ground for believing his mind to be impaired. He evidently did suppose that he read and counted correctly, and I think no man of his age, brought up here, could suppose he did read and count correctly, when he did not. A newspaper was handed to him to read. He looked at it and

stated some of the letters correctly. His attention was turned to a word. He did not call it correctly, and couldn't combine letters.

He did not dissemble. I should suppose him the shrewdest man in the world if he did dissemble. I have not the slightest doubt that there was no attempt to dissemble. He was very deaf. He did not dissemble deafness. When I read to him from the testament, he would voluntarily place his ear very near to me. He is very deaf, beyond doubt.

Previous to the commencement of this trial, I called on Governor Seward, at his office, and conversed with him about this prisoner and his deplorable condition. I requested Mr. Curtis and Doctor Robinson to go with me and see the prisoner. I may have spoken to others. I have felt some solicitude on account of this man; but have not done any thing concerning him but what I conceived to be my duty. I don't know as I've done as much as I ought to have done for the prisoner. I inquired of the prisoner whether he had counsel. He didn't give any answer, immediately. He didn't comprehend the question at first. It being repeated, he finally said No. I asked if he would like to have Gov. Seward defend him. He was agitated and hesitating. At length he answered Yes. I told Governor Seward of this subsequently at his office. Before the conclusion of my last interview, I became satisfied that his mind was in a singular condition; and the result of all my interviews has led me to believe his mind is in a shattered or unsound state. I can give no technical name to the difficulty. I believe he knows right from wrong in regard to common transactions with which he has been familiar; the same as a little child five or six years old does. But on topics involving the right or wrong of seeking redress for injuries received, on the principle of retaliation, I consider him incapable of discriminating between right and wrong. I have formed an opinion that he is especially incapable of discriminating as to the right or wrong of making the innocent accountable for the offences of others. He could not assign any consistent motive for his indiscriminate slaughter of men, women and children. There was indeed no motive that would actuate a sound mind.

Cross Examination.—Q. Have you not been very active in the defence of this prisoner?

A. I have not been very active; not so much so, perhaps, as I should have been.

Q. You have taken a deep interest in his case, have you not?

A. Since I became aware of his condition, I have.

Q. Did you conceive it to be your duty to employ counsel for the prisoner?

A. I need not answer that, as Gov. Seward had previously stated to me that he would endeavor to defend him. I employed no counsel.

Q. Why did you feel such a deep interest for one who had slain a whole family without provocation?

A. If he had been sane and in prison, it would have been my duty to have visited him, although guilty.

Q. Did you visit him in your clerical capacity?

A. For the most part, perhaps, I may say I did.

Q. Have you not done more in this case than came within the scope of clerical duty?

A. I am not aware of having acted in any way derogatory to my clerical duties.

Q. Have you not written about this case and published your letters in newspapers?

A. I have.

Q. Have you written for religious papers?

A. For one, I have.

Q. What one?

A. The Evangelical Magazine and Gospel Advocate.

Q. Did your articles contain matter in opposition to capital punishment?

A. Very likely.

Q. Are you opposed to capital punishment?

A. I am, and think it very wrong, and that it is a relic of barbarism.

Q. Have not your views in respect to capital punishment had some influence on your mind in respect to the prisoner?

A. It may have increased my interest in his behalf, perhaps.

Q. Are you not opposed to his being hung?

A. I should think it wrong. I cannot think it right to take the life of another, and hence I am opposed to hanging any one.

Q. Would you not punish crime?

A. Certainly, but not in that way.

Q. Did you not say in your communication that the execution of the prisoner would be very wrong?

A. In that article I may have advanced views in opposition to capital punishment; but I have no recollection of saying that this case furnished any argument.

Q. Did you not say, in effect, that this case furnished no argument for capital punishment?

A. I do not recollect saying so. I think I did not.

Q. Have you not also written for the Auburn Advertiser, a political paper?

A. I did, soon after the murder.

Q. Did you not, in an article published in that paper, denounce this community in respect to this prisoner?

A. I did not denounce any one, but spoke of the neglect of the colored population.

Q. Did you not charge this community with the crimes of this man?

A. I did not charge them; I said they were, to a certain extent, responsible for the crimes committed in their midst, and I think they are, in some degree.

Q. Is this murder the legitimate consequence of the neglect of the colored people in this place?

A. It is my opinion that neglect is one of the causes that led to it.

Q. Then you believe it the legitimate cause?

A. So far as it is a cause I consider it legitimate; but by legitimate I do not mean an unavoidable, or a rightful cause.

Q. If the cause lies in the neglect of the community, the crime followed necessarily, did it not?

A. I think not.

Q. Suppose the cause were sufficient?

A. Their neglect is no justification for the crime, for it cannot make the action right.

Q. What signature did you append to your article published in the Advertiser?

A. Justice.

Q. In that article did you not state expressly that this neglect was the legitimate cause of this crime?

A. I might have inquired whether or no it was not.

Q. Did you write another article for that paper?

A. I did.

Q. Did you write any other?

A. I did not.

Q. Were you acting in a clerical capacity in performing that act?

A. It is not unusual for clergymen to write articles of that character for newspapers. If they should meddle with political topics I should think it unusual and improper.

Q. Do you lend as much aid in all capital cases as you have in this?

A. I do not know that any other has occupied quite so much of my attention.

Q. Did you ever before go to a jail and ask prisoners if they wanted counsel?

A. I recollect of no other case where I ever asked that question.

Q. How did you come to ask the prisoner that question?

A. Gov. Seward suggested that I should ask him if he wanted counsel.

Q. Did you request Ira Curtis to go to the jail with you?

A. I did.

Q. How is Mr. Curtis related to you?

A. As a member and trustee of my church.

Q. Did you tell Curtis that he would be called to testify?

A. Whether I told him that or not, I am not able to say.

Q. When did you first see the prisoner try to read?

A. Not until after the first of June, but I had read to him from the testament before.

Q. Were you at the jail with John R. Hopkins?

A. I was not.

Q. What is Mr. Curtis' scholarship?

A. I have very little knowledge of it.

Q. Why was he called to see the prisoner?

A. I know of no reason why he was called upon, except for the reason that he was an old inhabitant of the village, and is a man whose statements can be believed.

Q. Had you heard him read before you went there with Mr. Curtis?

A. I had not.

Q. Who gave him the book?

A. I don't recollect; I think I pointed out the place to him, telling Mr. Curtis to turn to some part with which we were familiar.

Q. Did you see Doctors Willard and Clary there at the same time?

A. I think they were there; yet it may be that I mistake the interview when they were there. They were there once.

Q. Did you go there with Mr. Curtis?

A. I did not; I had agreed to meet him at Doctor Robinson's office, but found him at the jail when I arrived there; afterwards other persons came in.

Q. Did you say to Curtis then that the prisoner thought he could read, but could not?

A. I recollect of making some such remark to him.

Q. When was this?

A. It was the morning that the plea of insanity was put in; the first of June, I think.

Q. Have you questioned him in respect to the fundamental principles of religion?

A. I have not. My endeavors have been to soften him, and to make him aware of the wickedness of his offence. I had supposed he knew the fundamental truths of religion.

Q. Did you go there with Doctor Robinson?

A. I did once, I think.

Q. What did he go for?

A. I suppose with a view to his testimony.

Q. When did he go?

A. Well, during this court.

Q. Did you ask him to read then?

A. I think I did.

Q. When you went the first time, was there any person with you?

A. Yes; Ethan A. Warden went with me. He knew Freeman, and I went with him for that reason.

Q. How many times have you mentioned this case?

A. I have talked about it one hundred times.

Q. At all times alike?

A. Substantially so, as my views have not been changed.

Q. Did you notice at any of your interviews any excitement on the subject of his pay?

A. I cannot say that I have noticed any particular excitement on the subject of his pay. Pay was the chief topic.

Q. Which subject did he talk about most readily?

A. His pay and his wrongful imprisonment.

Q. What other subject did he converse about with the most facility?

A. He would answer more freely about the murder than on the subject of religion.

Q. What was it that the prisoner told you about the liver?

A. He said that Van Nest said, or that he thought he said, "If you eat my liver, I'll eat your liver."

Q. Who first told you that he said so?

A. I never heard it before from any one.

Q. Do you not know that it was an Indian ceremony?

A. I do not.

Q. Why cannot you as well conceive that Van Nest said so, and that the prisoner told what was false?

A. I cannot; and the reason is that Freeman is more likely to be mistaken than that Van Nest made the remark. Again, a deaf man may easily misunderstand.

Q. Suppose the expression to have been a common one?

A. That would make no essential difference.

Q. If it were a common expression of the prisoner, would his remark, in your judgment, be evidence of insanity?

A. It would lessen the force of the impression.

Q. Might the prisoner not have lied to you?

A. I don't think it impossible.

Q. Suppose he had a motive for lying to you, would you think it strange that he did?

A. Perhaps not as much so.

Q. Do not sane men have motives?

A. Yes.

Q. Do not insane men?

A. I suppose they do, but I think sane men act from motives that they can explain; whereas, insane men act from motives which they cannot explain.

Q. Is lying any evidence of insanity?

A. I should not consider lying any evidence going to prove sanity or insanity; but I have no idea that he did lie. His evident candor and frankness convinced me that he was not lying.

Q. Do you think he lied when he persisted that Burrington's horse was his own?

A. I do not think it was that kind of lying for which he is responsible, and yet I suppose the horse belonged to Burrington.

Q. You speak of a story about a fracas with Tyler. Do you think he related that affair correctly.

A. I cannot say.

Q. If Tyler should swear to a different state of facts, would you believe him or the prisoner?

A. I should believe Tyler correct and the prisoner mistaken.

Q. Do you consider the prisoner an outlaw?

A. Not at all, sir.

Q. If it should appear he was justly condemned for horse stealing, although he pretended innocence, and should slaughter people, would you think him insane?

A. That might or might not be a circumstance tending to show it, depending upon circumstances.

Q. Do you suppose a man insane for acting without a motive, merely because you cannot discover it?

A. No; for the actuating motive may not appear; yet the actuating motive, if discovered, ought to be adequate to a man of sound mind.

Q. Have you ever known of a motive adequate to the crime of murder?

A. I have never known it adequate in a moral point of view. I have known it sufficient to induce retaliation.

Q. Well, in any sense, could Freeman have had an adequate motive?

A. I think not; and that is one of my reasons for thinking him insane. I think his indiscriminate massacre a further reason.

Q. Have you ever heard of the Wyoming massacre?

A. I have read of it.

Q. And that at Cherry Valley?

A. I have.

Q. If one of those Indians was arrested, and it were proved that he had killed, would you think him insane?

A. I am unable to say—morally so, perhaps.

Q. Are pirates insane, who live by plunder?

A. Not if they have a motive; they may be depraved, but not insane.

Q. You have spoken about the subject of his pay. Now, if he told the truth and was wrongfully imprisoned, was it not natural for him to suppose that community owed him?

A. I think not.

Q. Do you believe all in prison innocent, who say they are not guilty?

A. By no means; yet I think there are innocent persons there.

Q. If an innocent man were imprisoned for an alleged offence, and he should retaliate by killing when he came out, would that be evidence of insanity?

A. That an innocent man should kill, I should consider a strong mark of insanity.

Q. What do you think the prisoner fled for, after committing the murders.

A. I think from fear.

Q. Did you ever know a man who thought that the law of the land was to hang people for doing right?

A. I never did.

Q. Have you ever heard of men who expected to be pardoned on account of repentance?

A. Yes; but I should not call them insane.

Q. Have you not seen men who could neither read nor count more than twenty-five?

A. I may have seen such men. Yet I am quite confident that a sane man twenty-three years old, who cannot read, but thinks he can—who cannot count more than twenty-seven or eight, but thinks he can, cannot be found in this county.

Q. Do insane people commit crimes?

A. I believe they do.

Q. Do they often deny the offence afterwards?

A. I believe they do, or often do.

Q. Did you ask him why he denied stealing the horse?

A. I did not.

Q. Which subject that you examined him upon throws the most light upon the question of his insanity?

A. I cannot say. I don't think any one, taken by itself, throws much light upon the state of his mind; but all taken together, I think do.

Q. If all the light we had about it was that he prepared the knife, hid it, killed the family, denied it, ran away, was arrested and put on trial, would you think him insane?

A. I do not think it would decide the case.

Q. Suppose that Doctor Willard had given him the numbers one, two, three and five, and asked him what they amounted to, and he had said nine, would that in your judgment be evidence either of sanity or insanity?

A. I don't think it would determine the question.

Lyman Paine, called and sworn, testified: I have been a magistrate nearly twelve years. On the Saturday or Monday before the murder, the prisoner called at my office, opened the door, advanced four or five feet, stood a few moments with his head down, and looked up and said he wanted a warrant. He advanced nearer to me, and I asked him what he wanted. He said, "Sir, I want a warrant." I asked what for. He then came nearer to me and spoke very loud, and said, "Sir, I want a warrant." He then said, "I'm very deaf, and can't hear very well." I then asked, in a loud voice, what he wanted a warrant for. He replied that he wanted a warrant for a man who put him to State Prison. I think then that I asked his name. He told me. I asked how long he had been out of prison. He said he came

out last September. I said to him then, that if he had been to the State Prison, he had been tried for some offence. He said he had, for stealing a horse, but he didn't steal it. I asked who he wanted the warrant for. He told me some name; I think it was Doty. I then said, "Then you want a warrant for perjury—for swearing false." I had to talk very loud. I then told him that in order to get a warrant he must get at the facts. He then appeared to be in a passion; said he had been abused, and would have satisfaction. I then told him I would not give him a warrant without further information. He stood a little while longer and then threw down two shillings, and demanded one. He said, "I demand a warrant," and was in a passion. I then said he had better take his money and put it in his pocket; that I should not take it, nor give him a warrant without further information. I told him, further, that he had better go away and find a place and go to work. I advised him to do so, or that he would get into prison again. He said, "I'm so deaf I can't get work; people won't employ me. I've been trying, and can't get work." I then said to him that if he couldn't get work he had better go to the overseer of the poor and apply for assistance. He remained some time, and then took his cap and left, and as he went out he shut the door very hard. I inferred that he was very deaf, ignorant and malignant. This was in the forenoon. In the afternoon he called again. He came in and stood with his head down, as before. I beckoned him to come near me. I asked him whether he wanted a warrant for a man and a woman. I asked this because he had used the word "they." Then he named Mr. Doty and Mrs. Godfrey. I refused him a warrant; told him he had been there before on the same errand, and that he had better go away. He waited a few minutes and finally went away. I saw no more of him until he was arrested for the murder of the Van Nest family.

Cross Examination.—He said he wanted the warrant for the man who put him in, or sent him to the State Prison. He said he did not steal the horse he was tried for. He said he would have a warrant. The legal fee for a warrant is chargeable to the county, and is two shillings. At that time I came to no conclusion that he was crazy.

David Winner was next called, and being sworn, testified: I live in Port Byron, but used to live here. I have known the prisoner sixteen years, and knew his father and mother. I knew Jane Brown. She has a sister who is crazy, and lives at Adam Gray's. I know Sidney Freeman, the uncle of prisoner. He has been crazy a good many years. William's mother is called an Indian woman, but she is part French and African. I knew the prisoner well. When this boy was twelve or thirteen years old, he was a pretty sprightly lad, sensible, and very lively. I saw no difference between him and any other boy of sense, at that time. I saw him in prison when he'd been there a year. I saw him about a week after he came out. He was at his uncle Luke's. He then appeared to be a foolish man. I hardly knew him. I asked Luke if that was Sally's son. He told me he was. I

said he was very much altered. Luke said he had just come out of prison. He had altered very much in his looks and behavior. He was sitting down in a chair, snivelling, snickering and laughing, and having a kind of simple look. I spoke to him, but he didn't speak to me. I was told to speak louder, for he couldn't understand. I saw him during Wyatt's trial, at Laura Willard's. I stayed there three nights, and slept with William in the same bed. At night he got up and talked to himself. I couldn't understand what he said. He appeared to be foolish. I gave him a dollar to get a quarter of a pound of tea and two pounds of sugar at a store, and a beef steak at the market. He went to the market and got it all in beef steak. When I asked what he did that for, he said nothing, but laughed at me. He got a dollar's worth of beef steak. He got up nights two or three times, and I felt cold, and told Laura I wouldn't sleep with him any more, and I went and slept in the other room. He kept on his trowsers always, and slept in 'em. He sung when he got up nights, but there was no meaning in what he sung. This was three or four weeks before the murder. He was sober as I was. There was no liquor there for him to drink. He was called a sober man, as far as I know.

Cross Examination.—I came from Port Byron here last Saturday evening. I was subpœnaed by Governor Seward's clerk to come here. I am forty-seven years old. I cannot read. My master didn't give me no learning. I can't count one hundred without missing some. I drink spirits when I want it; when I don't, I don't. When I slept with the prisoner he was not at work there, but was boarding there. I was doing the same. I came on a visit to see the folks. I saw him some during the days. He sat down by the stove pretty much all day, only when he went to eat. He went of errands for Mrs. Willard a good many times in a day. Sometimes he'd be gone one hour—sometimes two. One night he came home pretty late. I can't tell whether he had been drinking. I never drank with him. When I sent after the steak by him, he ate some of it with us. His mother has a daughter who is foolish.

Ira Curtis, called and being sworn, testified: I reside in Auburn. Am fifty-two years of age, and by occupation a merchant. I have known the prisoner seven or eight years, but not very distinctly until the first of June last. He worked for me in the spring of 1840 a short time, perhaps a week; he worked in the kitchen yard. His disposition was not good; he was stubborn and stupid. He was of no use to me. If I sent him away five rods he would be just as likely to bring me the wrong thing as the right one. He was a dull, morose, stubborn boy, and if he had any capacity, I could not discover it. My recollection is rather indistinct about him, yet I can remember him enough to know that he was a singular boy. Since his arrest I have conversed about him a good deal with people in my store. Some one told me that I would probably be called as a witness. I had kept clear of all the excitement. About the first of June I was requested to go and see

him, and I went. He was in a tremor and seemed to be agitated. I went up to his cell door and talked through the grates. I could not make him hear without great difficulty. After some attempts to talk with him, Mr. Austin, our clergyman, came in. The keys were handed him, and he opened the door and we went into the cell together. I asked him if he knew me. He said he did, and called me by name. A testament which was lying near by, was handed to him, and he was asked if he could read. He said Yes. He was requested to read, and he commenced, or pretended to commence and read, but he didn't read what was there. He looked at the book and repeated, "O, Lord—Jesus Christ—mercy—Moses," and other such words indiscriminately, and mixed up. Some of the pretended words I did not understand, and doubt whether they are to be found in any language. None of the words repeated were in the place. His attempt was no reading at all. I took the book and told him that he didn't read right. He said, "Yes I do." I told him that he couldn't read. He said, "Yes I can." I looked at the place and found that it was the chapter beginning with, "In those days came John the Baptist, preaching in the wilderness," &c. I then pointed to the opposite page, and he did no better than before. I said, "You don't read right." He said, "Yes I do."

Finding that he could not read in the testament, I took from my hat a paper, a bank note detector, upon which was the word, "admirable." I asked him to count the number of letters in that word. He tried, but jumbled it up. I pointed to the word and asked him what it was. He looked up with a silly expression and said, "woman." I pointed to the word Thompson, for it was Thompson's Detector, and said, "What is that, Bill?" He said, "Cook." I pointed to a capital letter A which he called A, and he called the letters along to E correctly. I asked Mr. Austin the meaning of Bill's actions. Mr. A. replied, that he thought he could read, but couldn't.

Mr. Austin tried to get him to count, or told me to ask him. He commenced at one and then counted along up to twenty, hesitating some, and stopping to think. He hesitated, and then went along from time to time until he got to twenty-seven or twenty-eight, and then jumped to eighty. I told him once to say "twenty-one," but he seemed to have difficulty in saying twenty-one. He never got higher than twenty-eight regularly. He could not combine nor multiply numbers. I asked him how many two times four was. He said, "Eighty." I asked him how many two times three was. He said, "Sixty" or "Sixty-four." I asked him about killing the Van Nest family, and whether he knew Van Nest. I forget his answer to that. I asked him how he came to be up there. He said, "I went up south a piece," or "I'd been up the lake a piece," or something like that. I asked how far. He said, "I stopped at the house beyond there." I asked what for. He said, "To get a drink of water." I asked what he went into Van Nest's house for. He said, "Don't know." I asked if he went in to murder or kill them. His answer was, "Don't know." I asked if it was for money.

He said, "No; didn't know as they had any." I asked something about the child; if he killed the child. He said, "They said I killed one, but, Mr. Curtis, I didn't, I certainly didn't," or very near that. I asked what he killed them for. He said, "You know I had my work to do." I told him that was nonsense, and repeated the question loud and distinct. He answered, "Well, I don't know; can't tell." I asked if he had any thing against those people, or against Mr. Van Nest. He said No; and then to the same question he said, "I don't know." I asked why he thought it was time to begin at the other place. He said he didn't go in to kill them; "thought it wasn't time yet." He said, "they wouldn't pay him," that he had been imprisoned, and "they must pay me." I asked whether that had any thing to do with killing these folks. He said, "I don't know." He'd been in prison and they would'nt pay him. He never said any thing without being questioned, except about the child. He spoke very low, so one could hardly understand him.

I have seen him since; saw him to-day. He was asked to-day if he knew what was going on. I don't remember what he said, but he didn't appear to know what was going on. He was asked what the jury were there for. He said No. He was asked if he knew what the jury were there for. He said No. He was asked if he recollected meeting any one when he went up to kill those people. He said he met somebody in a cutter. He said he should have killed that person but he was too far off; it was too muddy. I asked if he thought he should be hung. He said, "Don't know." I asked if he wanted to be hung. He said No. He was asked if he'd kill any more if he was let go. He said No. I have formed an opinion respecting him. I do not honestly believe he knows any more of the moral character of an act, than a dog or a cat. I do not think he has any capacity, or if any, it is as little as any human being can have. He don't feel any more compunction than a dog or cat. A dog or cat may know they have done wrong, but yet know nothing of the character of an act, nor feel compunction. I think he does not dissemble; nor have I seen any thing like it for a moment. I never saw any thing that left any impression on my mind for half a minute that he was attempting to deceive. I don't believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes, because he would forget what he set about. He is incapable of understanding. He is part fool, bordering on idiocy. I think he is idiotic and crazy.

Cross Examination.—My opinion respecting the prisoner was formed by seeing him that day, and to-day in the jail, and from all I saw when put together. I was puzzled that he should say he could read when he couldn't. Mr. Austin and myself were alone with him nearly an hour. I asked him some questions outside the grate before Mr. Austin came. I discovered no unwillingness on his part to answer. This was on the first day of June, the day this court began. Some of the time I thought he was foolish—sometimes that he was crazy—and sometimes a little of both. I think now that

he is incapable of understanding and of controlling himself—part fool, bordering on idiocy—crazy and an idiot; both crazy and insane. If all the doctors in the world should say he was not a fool, I should not believe them. For a moment I thought he knew better than to answer as he did; and then again I saw he didn't. When I told Mr. Austin that this was queer, he said to me, he thinks he can read but can't. We tried him more than once about reading. Freeman was a stubborn boy when he lived with me. He was stupid—when I told him to do one thing, he'd do another. I then thought he was contrary. I think he knows less now than then. He didn't go to school when he lived with me. He was not deaf when he lived with me, and would understand what I said to him; he can't now. When he lived with me he looked like ordinary darkies. When I tried him, he couldn't add nor multiply. I don't know whether he has failed since the first of March. I believe he varies from one hour to the next, as to sense. As to his fixing on the price of eighty dollars for the horse, I should think it was entirely accidental. His acts in reference to the knives, don't change my opinion any. I don't attach much importance to the fact that he cannot count twenty, only as it shows ignorance. As to his mind, I think it is in a singular condition. I think there is near relation between idiocy and insanity. If any person twenty years old couldn't tell how much twice two was, I should say he was all but a fool. It did occur to me once, whether the prisoner, with his appearance of sincerity, was attempting to play off a game of imposition. The thought vanished in a moment. There was too much before me. I have no doubt of his sincerity. I don't believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes.

Charles A. Parsons, called and sworn, testified: I am a clerk in Gov. Seward's office. Sometime in the early part of last March, the prisoner called at the office and asked if it was a squire's office; on being told that it was, he said he wanted a warrant. I didn't understand him until he had asked once or twice. I asked him what he wanted it for. He said for a man that sent him to prison, and he wanted to get damages. I told him he was looking for a justice of the peace. I told him where to go, but he did not understand me. He then went out.

James E. Tyler, called and sworn, testified: I was a keeper in the State Prison in 1841, and had Freeman under my charge for a while. I soon discovered that he didn't do quite as much work as he ought to. I told him he was capable of doing as much work as other men of his size and experience, and that unless he did a reasonable day's work, I should punish him. I talked to him in that way several times. I talked to him and found it did no good. I called him up to punish him; told him I was going to punish him for not doing more work, and should do so repeatedly until he should do more work. When I talked with him about doing more work, he gave as an excuse that he was there wrongfully and ought not to work. He

may have made other excuses. I at last called him up, and told him I had done talking to him; that I was going to punish him. I turned to get the cat, [cat o'nine tails,] and received a blow on the back part of my head from him. He struck me with his fist. I made another step, and as I looked around he gave me another blow upon the back. I then hit him with my foot and knocked him partly over; perhaps he fell. I think he did fall over. He jumped up, went across the shop and got a knife, with which he came at me. I then had to defend myself, and also to take some means to cause him to submit. I picked up a basswood board about two feet long, fourteen inches wide and half an inch thick, and struck him on the forehead. It split the board and one piece of it fell on the floor, and the other, a piece about four inches wide, remained in my right hand. Other convicts then came up to him, but I told them to let him alone—that I would attend to him. I then gave him eight or ten blows with the remainder, and told him to set down. I knocked the knife from his hand with the piece of board, and it fell on the floor. My impression is that the blow was a little on the left side of his forehead. I then flogged him ten or a dozen blows and sent him to his work. He never gave me any trouble after that, although he never did a full day's work. He never spoke but when spoken to, and was of few words. I considered him below the mediocrity of blacks. He was very hard of hearing all the time he was in my shop. He held his head down and was rather dull and down cast.

Cross Examination.—He was hard of hearing before the encounter and the blow. The board with which I struck him, was kept for a tally board in lieu of a slate. I grasped it at the corners and hit him on the head; it split, and part of it remained in my hand, and with that I hit him on the wrist. He said nothing. I let him sit a spell before I flogged him. He didn't stand the flogging very comfortably, for the blows sat pretty snug. I was some excited at the time. A black man's hide is thicker than a white man's, and I meant to make him feel the punishment. I never punished him after that, though he never did a full day's work. He worked at rough filing, preparatory to the process of japanning. It was regarded as coarse work. He did his work well after that, as far as I know. He always stood with his head down; had a down-cast look; more so than convicts in general. In looking up he turned his eye and head. I see nothing about his features now different from what they were then. I have seen him once in jail since his arrest for murder. I can see no difference in his appearance. He is deaf, and when I asked him in jail if he knew me, he asked me to speak louder.

Q. When you questioned him in the jail, were his answers pertinent and appropriate?

Objected to. Objection overruled and decision excepted to.

A. When the questions were direct he could answer.

Q. Did you see any thing about the prisoner indicating insanity?

A. I did not. I never thought about it.

Q. Did he work regularly when in the State Prison?

A. He never lost a day while under me.

Q. Had you seen a number of insane men in the prison, and did you have any difficulty in detecting insanity?

Objected to. Objection overruled and decision excepted to.

A. As a general thing, I did not.

RE-EXAMINATION.—When I talked to him about doing more work, he would sometimes say he couldn't do more, and sometimes that he was sent there wrongfully. When I spoke about not seeing any thing insane in him, I mean to say that the question of his insanity was not brought to my attention. For that reason I never thought of it. The instrument which I call a cat, is made and used for flogging men. The stock is made of raw-hide, and is about two feet long; the lashes are of about the same length and have several strands. After using the board upon his head I never made any inquiries to see whether or not it injured his hearing. As to his capacity, I consider blacks below whites in intellect, and I consider him below the majority of blacks. He has not much intelligence, so far as I can discover.

ETHAN A. WARDEN, called and sworn, testified: I have lived in Auburn most of the time during the last twenty-five years. I am President of the Village of Auburn, but hold no office in the church. I knew the prisoner fourteen years ago. He then lived with me, and before that with my father. He lived with me several months. We considered him a bright, active boy. He used to play truant, yet we considered him a bright boy, and took him for that reason. We considered him kind in his disposition. We thought he understood well enough then. He did not attend school on week days; we supposed he went to Sunday school. I do not think there was then any defect in his capacity. He was then about seven or eight years of age, as we supposed. After he left my house I do not recollect of seeing him until I saw him in the State Prison. When I saw him there, he was coming to me. I spoke to him. He appeared different from what he used to. He appeared stupid and different from what I expected he would. He was deaf, and did not appear as he formerly did; and it made an impression on my mind at the time. He appeared bright when he lived with me. The difference was so peculiar I don't know as I can describe it.

[This witness on the preliminary trial, remarked that the difference between the prisoner as he saw him in prison, and the prisoner as he was when he lived with him, was so marked and peculiar that when he saw him in the State Prison, the transition had been so great as to arrest his attention; and in describing the effect on his mind, the witness used the words "thinks I to myself, what has come over Bill." That expression was remembered, and probably induced the examining counsel to call for it on this trial.]

Q. Did you say to yourself when you saw him, what has come over Bill?

Objected to. Objection sustained and decision excepted to.

Q. Did you mention that to your family?

Objected to. Objection sustained and decision excepted to.

Q. Did you then think to yourself that something strange had come over him?

Objected to. Objection sustained and decision excepted to.

Q. Was it your opinion when you saw him that a change had come over him?

Objected to. Objection sustained and decision excepted to.

Q. Had a change come over him when you saw him in the State Prison?

A. He appeared changed. He appeared different from what he did when I knew him. He was not as sprightly nor as bright, but was more stupid. The next time I saw him was when he passed my house in a wagon. I had, however, seen him in the street sawing wood. I then asked him how he was, but I think he did not reply. I did not take much notice of him, yet I recollect that he looked sad. I next saw him when he passed my house on his way from Oswego, under arrest. He was carried through the village to the house of Van Nest, and when they brought him back, I went into the jail very soon after he arrived in charge of the officers. I went into the jail and asked him if he knew me. He said Yes. I then asked him my name. He said "Mr. Ethan A. Warden." This occurred in the hall of the jail, before he was taken to his cell. He was then taken to a cell and ironed. I then asked him if he remembered living with me. He answered Yes, and said "I wish I was back there." I talked with him some, but I cannot remember all the questions I put to him. I however recollect that I asked him if he talked with a man about the time he started for the Lake. He answered No. I asked what time he started. His answer, was "About sundown." I asked if there was not another black man with him. He answered No. I asked if he did not see and talk with somebody. He answered No. I asked whether he met any one on the road. He said "Yes; a man in a cutter." I asked if he spoke to him. He answered No. I asked if he knew who it was. He answered No. I asked if he went into the yard of the house this side. He said Yes. I asked whether when he came out of the yard he crossed the road and spoke to a man standing by a stump. He said No. I asked whether he did not talk to a white man. He said No. I asked whether he had a gun. He said No. I asked whether he saw a man with a gun. He said No. I asked whether he knocked when he went up to Van Nest's door. He said Yes. I asked who opened the door. He said, "The man." I then asked if he struck him when he opened the door. He said No. I then asked what he did do. He, said "Went in; stood by stove." I asked where his knife was then. He said, "here," putting his hand to his side. I took hold of his coat and he showed me. I then asked what the man said. He answered, "What do you want." I asked what he told him. He said, "Warm

me." I asked what the man said then. He said, "If I eat his liver, he'd eat mine." I asked what he said next. He said, "I made a pass at him." I asked what the man did next. He said, "Turned and fell out." I asked where the woman was. He said, "In a room standing by table." I then asked where he struck the woman. He said, "she come out; I made a pass at her." I asked where she went. He said "she went out." I asked if he knew there was a man up stairs. He said, "No; opened door, saw a man; made a pass at him." He repeated all this, but paused between the sentences, but I said "well," and he would go on. I then asked if the man knocked him down. He said, "No; I tumbled and fell; broke my knife." I asked where he hit the old lady. He said, "At the gate; she chas'd me out." I asked if that was after the contest on the stairs. He said Yes. I asked if he had another knife. He said Yes. I asked where that was. He said, "By the gate." I asked where. He said, "Covered up." He said "'Twas run under." I asked him what it was under; whether it was under the snow. He said Yes.

I then inquired about that knife, and found that it was a knife fixed in a cane. I asked its length. He said, "About so high," raising his hand. I got the impression that it was larger than a cane. I asked what became of it. He said, "I've lost it." Once he said, "I broke it." I think I followed him along to the time when he said the horse fell. He said, "Fell down with me—broke my knife." I asked if he broke the knife then. He said, "No; I straightened it out." I asked if his hand was cut there at the gate. He said Yes. I asked if the old lady cut it. He said Yes. I asked him what made him kill the child. He said, "Don't know any thing about that." At another time he answered, "I don't think about it; I didn't know 'twas a child." Once he said, "I thought feel it more." I then said, "When you started from home, what did you go up there for?" He said, "I must go." I said, "Why must you go?" He said, "I must begin my work." I then said, "What made you do it?" He said, "They brought me up so." I then asked who brought him up so. He said, "The State." I then said, "They did not tell you to kill, did they?" He said, "Don't know—won't pay me." I said, "Did you know these folks before you went to prison?" He said No. I asked if he lived with old Mr. Van Nest when he was a boy. He said No. I said, "Was you there a few days before, to get work?" He answered Yes. I asked if they said any thing to offend him, or make him angry. He said No. I asked what made him kill them—what he did it for. He said, "I must begin my work." I asked if he did not expect to be killed. He said, "Didn't know but I should." I asked what made him go, if he expected to be killed. He said, "I must go," or "I must do it." I asked if he went there to get money. He said No. I asked if he saw a man there counting money, when he went up to get work. He said No. I asked if he expected to get any money. He said No. I asked if he intended to get the horse. He said No. I asked how he came to take him. He said, "Broke my

things—hand was cut—came into my mind—take the horse—go—and—get to—could do more work." I asked what he would have done if he had not broke his things. He said, "Kept to work." I asked him whether he would have killed me if he had met me. He said, "S'pose I should." I asked what made him begin at that house. He said, "Stopped two or three places; thought it wasn't far out enough to begin." I asked if he was not sorry he had killed so many folks. He said, "Don't think any thing about that." I asked if he did not expect to be hung. He said, "Don't think about it." I asked if he liked to be in jail. He said, "Pretty well." I asked if it was a good place. He said Yes. I asked if he thought of what he had been doing in the night. He said No. I asked what made him deaf. He said, "Got stones in my ears—got it out." I asked if he got it out, and if he did not hear better when he got it out. He said, "Yes, I think I did." I asked if he was well. He said Yes. I asked if he drank any thing when he started. He said No. I asked if he drank any thing that day. He said Yes. I asked when. He said "Afternoon." I asked where. He said, "Up at house." I asked at whose house. He didn't answer. I asked if it was at an Irishman's house. He said Yes. I asked his name. He said, "Don't know." I asked if he saw that man after he started. He said No. I asked who got the liquor. He said, "I did." I asked how much. He said a pint. I asked if he was intoxicated when he started. He said No. I asked if it did not make him high. He said, "Got over it before I started."

In the course of this conversation he stated that he had been to lawyers to get pay, and that they would not do any thing for him. This was said in answer to some questions which I don't recollect. He appeared differently from what he did before. He was stupid and did not appear to understand very well. It is difficult for me to explain his condition so that the jury can see him as I did. When he was a boy he was bright, but was not so in jail. When a boy, and I spoke to him, his countenance had a different cast and expression from what it has now. He was a cheerful and very playful boy. Now he is neither cheerful nor lively. He was talkative when he lived with me; in the jail he was not. In the jail I don't recollect of his speaking except when I spoke to him. His answers were slow and sometimes indistinct. He made no inquiries about my family. When I asked him if he recollected my little girl, he said No. He never manifested any feeling at my coming to see him, nor did he ask me to come again. I asked him if he wanted me to come and see him again, and to that I think he answered Yes. I asked if he could read. He said Yes. He took the book, put his finger on the line, and said, "Holy—happy—Jesus Christ—come down," and similar words that were not on the page. He knew the letters of the alphabet, and once in my presence he counted up to twenty-seven or eight. I was satisfied he could not read, but that he thought he could. I asked him if he would do better if he were let out, and he gave something like an affirmative answer. I think there was no dissembling—there could be none. I look upon him

now and as he was when he lived with me, and he appears different. I could not get any thing from him that showed sorrow for what he had done, or feeling for the crime. I don't think him much above a brute in regard to his knowledge of right and wrong. I don't think he is of sound mind. I am of opinion that he is deranged.

Cross Examination.—Q. You have taken a pretty active part, have you not, in relation to this defence?

A. I have felt some interest in it.

Q. It has been a very active interest, has it not?

A. It has not been more active than that of getting him into the jail.

Q. Have you not manifested considerable feeling in relation to the defence?

A. I have felt a considerable degree of interest in this case, and should like to give my reasons why. I saw the condition of the prisoner, and was aware of the excitement in community, and the deep prejudice against him. If to have felt an interest was to be active, then I was active. I expressed my opinion of the prisoner and of the course that was pursued toward those who differed with some others in opinion, to the district attorney, who said, himself, that there was more reason for this defence than in the Wyatt trial. I talked with the district attorney freely then, and he knew what my opportunities for judging were, and what my opinion of the prisoner was.

Q. Did you express to the district attorney the same opinion which you have sworn to?

A. I did.

Q. Have you served subpœnas upon witnesses to attend this trial in behalf of the prisoner?

A. I have not. I once took one from the prisoner's counsel, and at request handed it to a constable.

Q. Have you not requested persons to come here as witnesses?

A. I may have told men to come here,—that they would be wanted; but I don't recollect as I have.

Q. Have you not advised with the counsel for the prisoner in relation to the facts to be proved on his defence?

A. I have conversed with them several times about the case.

Q. Did you not tell the district attorney, in your conversation with him, that you knew little or nothing of the prisoner, from the time of his living with you?

A. I don't recollect telling him so.

Q. Did he not say after that, "then I won't subpœna you."

A. He did say so to me after I told him what I knew about the prisoner.

Q. Did you not say you knew little or nothing of Bill?

A. I may have said I knew little or nothing of him since he left me, but I do not recollect it if I did.

Q. You have a memoranda that you swear by, have you not?

A. I have one before me.

Q. When was it made, and by whom?

A. By myself.

Q. From what did you make it?

A. Partly from memory and partly from my former testimony.

Q. Is your memory better by taking a memoranda from your former testimony?

A. I thought I should remember better with a memoranda than without it.

Q. Which remark of the prisoner indicated insanity?

A. I cannot name any one in particular; when he made the remark about the liver I was disposed to think he was deranged.

Q. Any thing else?

A. Nothing in particular. His manner and every thing taken together, led me to think so.

Q. Did you not see something from which a jury could infer that he was in his right mind; for instance, the concealing of the knives?

A. I thought nothing of that. To me, one circumstance would not make much difference.

Q. Do you think the circumstance of his concealing his knives indicated insanity?

A. It might indicate sanity, and it might indicate insanity, in this case. The reason is—

Attorney General:—I don't want to know the reason.

Witness:—I want to tell the reason.

The Court:—The witness has no right to give the reason.

Mr. Seward:—The witness is asked whether a certain fact indicates sanity. The witness says it might not in this case, and wishes to say why. I insist, as well on behalf of the witness, as the prisoner, that he be permitted to give the reason for his answer.

Request denied, and decision excepted to.

Q. When did you discover the change you speak of?

A. I noticed it first when he was in the State Prison, but I noticed it more particularly when he was in jail.

Q. What is the difference that you noticed?

A. I noticed that he was not as bright and lively as he formerly was.

Q. Did it not occur to you that his chains might make some difference?

A. I don't think they made any difference with him.

Q. Would not the chaining of a man twenty-one years of age, who had murdered four people, produce some effect upon his cheerfulness?

A. He would not appear cheerful, yet he would not lose the marks of intelligence, if he were in his right mind.

Q. Would you expect he would be as talkative?

A. I would not.

Q. Would you expect a criminal who was planning crimes, to be as free of speech as a boy whose mind was not thus occupied?

A. No; but if I asked him questions I would expect to see him answer intelligently.

Q. If he were confined in prison, and living on bread and water, do you think he would be as cheerful as he was when a boy at liberty?

A. I don't think he would be as lively.

Q. If he were deaf would it not make some difference with him?

A. I think it would, and I think it has with the prisoner.

Q. He was not deaf when he lived with you?

A. If he were it was not perceived.

Q. Can you tell how well he hears now?

A. I cannot, only as I see it indicated by his actions and his answers.

Q. How many times did you see him whilst he was in the State Prison?

A. Three or four times.

Q. What are your views in respect to capital punishment?

A. That the law should be changed.

Q. Then you are opposed to capital punishment?

A. I am. I don't think it right for one man to take the life of another.

Q. Do you think the law ought to be defeated?

A. I cannot say that I think it ought to be defeated; our laws in general ought to be executed, yet I think the law in respect to taking life is wrong.

Q. How long have you been of that opinion?

A. I never thought it was right to hang men.

Q. Do you believe what the prisoner says to you?

A. I suppose he thought he spoke the truth.

Q. Then you think he was sincere in all he told you?

A. I thought at the time he was telling me as it was.

Q. Did you believe him when he said he was sent to the State Prison wrongfully?

A. I think that he thought he was sent there wrongfully; and I have thought so, and that is my opinion still.

Q. Did you not hear the constable relate, on the former trial, the circumstances of his arrest for stealing the horse?

A. I did; and that had the effect to make me believe he was sent there wrongfully.

Q. When did you think to yourself that a change had come over him?

A. When I saw him in the State Prison.

Q. When did that change take place?

A. I think it very likely that it took place in the State Prison, or that it commenced there.

Q. Did you ask him, whilst he was in the State Prison, why he was there?

A. I did not.

Q. Why did you not ask him that?

A. The rules of the prison did not permit any conversation with convicts except on business.

Q. Do you recollect that he could read and write when he lived with you?

A. I do not.

Q. Do you recollect what his views were of God and heaven then?

A. I never talked with him on those subjects.

Q. Did you not converse with him about obedience?

A. I used to talk with him about his behavior, and urge and advise him to be a good boy.

Q. You say that when you passed him in the street where he was sawing wood, you did not notice him very particularly?

A. I saw him, spoke to him, but he made no reply. Further than that I did not notice him particularly.

Q. Can you tell why it is that you take so much more interest in the prisoner since he committed those high and heinous crimes, than you did before?

A. One reason, perhaps, is, that when he was arrested and brought past my house, into and through the village, to the house of Van Nest, the community were so indignant that many apprehended that he would not get back alive. I took my horse and rode up there. It was then said that he would be hung without a trial; that he ought not to be tried, and that he never would have a trial. I thought that, however guilty he might be, he should have a fair trial, and I aided the officers in preventing any violence to him before he was lodged in the jail. I heard remarks at that time from one of the members of this court, that I did not think becoming in a judge, and, altogether, there was occasion for some interest on the part of any who wishes to uphold the law, and preserve order in community.

Q. Did you think it better for the prisoner to have a trial?

A. Yes; and better for the community; I thought he ought to have a fair trial, not for the purpose of screening him, but as a matter of principle.

Q. Did you believe that the populace intended to Lynch him?

A. I do not know; I wish to avoid all that part of the matter, as it can do no good, and can reflect no credit upon any body who had any thing to do with any such attempt.

Q. What was it that excited the people to such a degree—the enormity of the crime?

A. There were folks who seemed to carry the idea that this had something to do with the trial of Henry Wyatt.

Q. Were you not satisfied then that the prisoner killed that family?

A. I did not doubt it.

Q. Did you not suppose, after he was lodged in jail, that he would have a fair trial?

A. At first I heard it said that there would be only the form; that counsel would be assigned him, but that he would not have a trial to any purpose.

Q. Is it not a little singular that he should have a trial when he knows and every body seems to be satisfied that he killed those persons. Is it not a little singular that he did not plead guilty?

A. I think not.

Q. Are you surprised that he should have a fair trial?

A. I don't know that I am.

Q. Did you think he would have a fair trial when this court began?

A. I knew nothing in particular to the contrary, yet there were reasons why it might not be so.

Q. What was your expectation?

A. I expected he would have a fair trial, or ought to have.

Q. If you expected that he would have a fair trial, why have you felt so much solicitude about it since the term began?

A. Well, the boy had once lived with me, as I have stated. Some time had elapsed since I had known much of him, until we got him into the jail. The sheriff asked me to come and try to ferret out the matter, and find, if possible, whether he had accomplices. I found him in the condition I have described, a proper object of sympathy and attention. Perhaps the interest I felt was enhanced by the effort of some to convict him at all hazards, if he had a trial.

Q. Do you not know that your opposition to capital punishment is the cause of the interest you feel in relation to the fate of this prisoner?

A. I do not know any such thing, for no such fact exists.

Q. Did you not visit the prison with Rev. J. M. Austin?

A. I think I did once or twice.

Q. Did you see him try to read in the testament?

A. I did.

Q. How did he articulate?

A. He sometimes spoke very indistinctly, but by repeating we could sometimes get a plainer answer.

Q. In what connection did he say he had his work to do?

A. It was said in answer to the question what he did it for, or how he came to kill the people.

Q. What was that renark?

A. As near as I can recollect it was, "I must begin my work," or "begin my work," but I may not have in my mind the precise order in which the answers were given.

Q. Did you examine him in Theology, there in the jail?

A. I once asked him some questions on religious subjects.

Q. What did you ask him?

A. I asked him if he ever prayed.

Q. What did he say in reply?

A. He said, "not much"—"used to."

Q. What further did you say?

A. I recollect of telling him that he ought to pray.

Q. Did he say any thing to you about their not giving him work; that they wouldn't give him work?

A. He frequently alluded to work; once he said he went in to warm.

Q. Do you recollect of the prisoner's saying, at your first interview with him, "they swore me into prison"?

A. I don't recollect of his making any such answer to me.

Q. Did he not make that statement to you in the presence of Sheriff Pettibone?

A. I have understood that the sheriff has so stated. I do not want to contradict him, nor be contradicted by him. I asked the prisoner if they had any thing to do with swearing him into the prison, and he may have said, "didn't they?" but I am certain he never said, "they swore me into prison."

Q. You say you inquired into the cause of his deafness?

A. I did; and he said he'd got a stone in his ear—got it out.

Q. Did you ever ask him why he ran away?

A. I did not.

Q. Did you ever ask him why he took Burrington's horse to flee with?

A. I did not.

Q. Did you ever ask him why he called the horse his?

A. I did not.

Q. Did you ever ask him which way he went to reach Schroeppel?

A. I believe I did; and also asked him where he left the knife.

Q. Why did you ask that?

A. My object was to see if he knew, and whether he had accomplices.

Q. Have you not examined more with reference to this trial, than for any other reason?

A. I have not; I had the state of his mind more especially in view than any thing else, yet I asked questions for other objects.

Q. Was the prisoner an ugly boy when he lived with you?

A. He was not; yet he was wild, and would play truant some.

Q. Did you not discharge him because he was ugly—so ugly you could not keep him?

A. I did not. I discharged him because his fondness for play was so great that he ran away from the house too often.

Q. Did you not consider him an ugly boy?

A. We considered him a good boy, except in respect to his running away. We thought a good deal of him. He was a pleasant boy.

Q. Was he not slow to do your bidding?

A. He was not slow in going upon errands. He generally did what I

told him to do, cheerfully. He was kind, cheerful, pleasant and attentive, generally, but he would run away.

RE-EXAMINATION.—Q. You were asked in relation to interviews with the counsel for the prisoner: were they casual meetings?

A. They were.

Q. When did you make the memoranda to which you have referred?

A. Since the last trial, along as things have occurred to me.

Q. What did you understand the prisoner to mean when he said he must begin his work, or must do his work?

Objected to. Objection sustained, and decision excepted to.

Q. Did the change that you observed in the prisoner arise, in your opinion, from his being in prison, charged with crime, or from a change in his mind?

A. He might have been changed by being in prison charged with crime, but there was a change in his countenance that made him very different from what he was when a boy, and his manner indicated a want of intelligence.

DR. LEVI HERMANCE, called and sworn, says: I have practiced medicine, yet my occupation at present is that of assistant keeper of the State Prison at Auburn. I saw the prisoner about the first of last December, and had a conversation with him at my house in relation to his having been in the State Prison. He was sawing wood for me. He told me that he had been in prison for five years, and that he wasn't guilty, and that they wouldn't pay him. I discovered that he was very deaf, and inquired the cause of his deafness. He stated that his ears dropped. What he said of his being in prison, I don't recollect particularly. I thought his manners very singular and strange, and what he said about pay, very singular and strange. He spoke in a gloomy, despondent state of mind. There appeared to be a sincerity in his manner. The tone of his voice was a dull and monotonous tone. I saw him again on the side walk and he spoke to me again on the same subject. I saw him in jail and talked with him there. There were a good many questions put to him in relation to the murder, and he related the whole; not as a narrative, but in answer to questions. He was asked how he happened to go up. He said, "It rained and I thought 'twould be a good time." I asked why he did not go up to some other family. He made no answer. Doctor Pitney asked why he did not kill him. He didn't seem to answer, but smiled. I then asked whether, if he had found some other person, he would have killed him. He said Yes. I asked whether he killed them for that horse. His answer was short. I asked what he meant by killing that horse. He said, "They'd sent me to prison, and they won't pay me." He was asked whether Van Nest had any thing to do with sending him to prison. I couldn't get his answer, but my impression is that he didn't charge Van Nest with it. We inquired whether he went to get money. He said No. Doctor Pitney asked if he didn't think he ought to

be hung for killing that family. He said at first "don't know," and to the question repeated, "Sent me to prison for nothing; ought I to be hung?" Dr. Bigelow was present at one time, and kept telling him to go on. He was asked if he could read. He said Yes, and tried to read. He tried, but failed. He was given money and was requested to count it. He called a ten cent piece correctly; but a Mexican quarter he called twenty-two shillings, or three or four times its value. He called two pieces right, the rest wrong. He counted to twenty-six or eight correctly. Doctor Pitney asked if it would be wrong for me to kill him, (Dr. P.) The prisoner said, "Why because he is the smartest man?" "No," said Doctor Pitney, "we are both alike." Dr. Pitney then said to him, "Would it be right for Doctor Hermance to kill me?" The prisoner said, "That would be bad." When at my house he said "the hearing of his ears fell down." My opinion of him last December was that he was a deranged man. Since then I have had no cause to change it—it is my opinion now.

Cross Examination.—I was born in the county of Rensselaer; have practiced medicine twelve years; am thirty eight years of age; have always used some of the medicines that Alopathists and Homœopathists use; yet I have been esteemed a Thompsonian practitioner. I was never a regular practitioner in the old line. I worked on a farm until I was seventeen; became an agent in a woolen factory; taught school winters; then practiced medicine some; have sold goods at auction; have been admitted as attorney in the court of common pleas; and am now a turnkey in the prison. I was never appointed auctioneer, but sold goods under a license of a gentleman in Fleming. At my interviews with the prisoner in my yard, I didn't talk over five minutes. There was more said than I have stated, but I gave what I recollected. The wood was sawed and piled well. I didn't make up my mind that he was crazy at the first interview. The next interview was about five minutes, longer or shorter. I then made up my mind that he was deranged; taking his manner, conduct and general appearance and conversation together. The tone of his voice was peculiar; structure of sentences singular; his articulation low and coarse; not distinct, yet I heard it. My own hearing is perfectly good. I judged he was deranged because he thought he had a right to pay, and he spoke with so much sincerity. There are many things pertaining to insane men which are indescribable.

Q. Were you with Doctor Bigelow when he visited the prisoner?
A. Not all the while; was with him a part of the time.
Q. Were you with Doctor Pitney?
A. Some of the time.
Q. Comparing yourself with Doctor Pitney, which is the most profound?
A. I think in Surgery and Medicine, he is a far greater man.
Q. Did not Doctor Pitney say you were both alike?
A. He said so to Freeman.

Q. Do you think the doctor will tell a falsehood?

A. Well, no, I don't know as he will.

Q. Then don't you believe he speaks the truth?

A. I suppose he does.

Q. Then didn't you believe him when he said you were both alike?

A. I supposed he meant we were both doctors.

Q. Do you think the prisoner spoke the truth?

A. I thought he was sincere.

Q. When he said "because he was the smartest man," did he refer to you?

A. Well, I suppose he did.

Q. Do you infer from that that he thought you the smartest man?

A. I don't, only from what he said.

Q. Then you differ with the prisoner on that subject, do you?

A. Well, I must say perhaps I do.

Q. And yet you think he was sincere?

A. I cannot answer that question further than I have.

Q. Do you believe yourself to be sincere?

A. I do.

Q. Do you believe that the hearing of his ears fell down?

A. I believe something happened to them, and that he said as I testified he did.

Q. Can you describe a disease, doctor?

A. I profess to be able to.

Q. Is insanity a disease?

A. It is called so.

Q. Will you be kind enough to describe it?

A. I said that some things about Freeman's insanity could be described, but some things in this case could not be; that they were even indescribable.

Q. Well describe what is describable?

A. I can name his looks, his appearance, his voice, his wanting pay and many other things.

Q. Do not sane men look, appear, speak and want pay?

A. They do.

Q. Then do not they indicate sanity as much as they do insanity?

A. In some men they might—here I don't think they do.

Q. Do you think the prisoner's remark about your being the smartest man, indicated insanity?

A. I thought it did, because he seemed to have reason for killing that would justify, but he had no reason for killing Doctor Pitney, and to my mind the remark indicated insanity.

Q. The reason for killing the family then did not indicate insanity?

A. Why, that indicated a right to kill because he had a reason—that's all; but if I killed Doctor Pitney without a reason it would be bad.

Q. Well, don't you think it would be bad?
A. I do, and that would be the public judgment.
Q. Then that indicated sanity, did it not?
A. Well, perhaps that did.
Q. How many times have you heard him read?
A. Once or twice.
Q. How many times have you heard him count?
A. Twice.
Q. Did he seem to try?
A. I thought he did his best.
Q. Could a sane ignorant man do more?
A. I suppose not; but the appearance indicated insanity in this case.
Q. What appearance?
A. His rolling eye, for one thing.
Q. But does not your eye roll?
A. Yes; but there was something peculiar about it in the prisoner.
Q. What was that peculiarity?
A. Well, I cannot describe it, but it was peculiar.
Q. It was sharp, was it not?
A. Perhaps I should say it was sharp.

Dr. Lansingh Briggs was next called, and being sworn, testified: I am a physician and surgeon, and have been physician and surgeon to the State Prison at Auburn. I have resided in Auburn twelve years, and have known the prisoner eight or ten years. I knew him before he went to the State Prison. Considered him a lad of ordinary intelligence, for boys of his condition. John DePuy married his sister; after which, I believe, the prisoner lived with him. I have seen him at my office. Have seen him, at times, since he has been in the jail. The first time, I went on Dr. Fosgate's invitation to see him. I attempted to speak to him, but he seemed not to hear, and I abandoned the effort. The next time, I went with Dr. Fosgate and Warren T. Worden, Esq. Dr. Fosgate, at this time, dressed his wounded wrist. I looked at the wound, myself, and asked him many questions about that and other matters relating to himself, and remained there with him about an hour. Whilst his hand was being dressed, I noticed his appearance closely, and discovered that he manifested but very little sensibility as to pain. Something occurred then that induced us to smile, and I noticed that he smiled when we smiled. At first I thought he understood what was going on, but after Dr. Fosgate left, Mr. Worden interrogated him about the crime, when I again observed the same smile and demeanor which I had observed before; but it seemed very difficult for him to tell his story without being questioned. He was asked why he murdered the family, and how. He generally answered pertinently, but briefly, in monosyllables, except when the question did not admit of such answers.

As to the commission of murder, he answered, after the question had been

repeated, "Why was I put in prison five years." His tone was low, subdued and imperfect. He was asked what door he went in at. He said, "Front door." He was asked where Van Nest then was. He said, "By the stove." He was asked what conversation passed. He said, "Nothing." The question was repeated, when he said, "If you eat my liver, I'll eat yours." The wound on his wrist was across it, and was healing. It was at the termination of the bone of the arm, and was a severe wound. We found him heavily chained to the floor, and manacled—the manacles were suspended so as to prevent their resting on his ankle. He manifested little or no sensibility to pain. I observed that he, apparently, could not narrate without our questioning him. His pulse I did not then examine, but did afterwards, and found that it varied from ninety-four to one hundred and fourteen or fifteen; varying according to his posture—standing or sitting. My opinion is, and was, that he had less mind than when I knew him before; that his mind had become impaired—that he had less vigor or strength of mind—was less capable of reasoning, comparing, retaining, and associating ideas. In my opinion, his mind is diseased—some portions of it more than others; and although he is perfectly conscious of what he has done and was doing, that he thinks and believes he has committed no crime. He justifies himself under the delusion that he had been wronged, and that society owed him reparation—that it was rightfully his, and was due to him as an equivalent and satisfaction. This delusion, in my judgment, is an insane delusion—the delusion of an insane mind.

Cross Examination.—I knew the prisoner ten years ago, and had conversation with him when he came of errands to my office. I do not remember any of that conversation particularly now, but it related to the errands upon which he had been sent to me. I gave him directions for the taking of medicine, and presume for De Puy's family. My knowledge and opinion of him at that time, arose from his doing errands correctly. I never knew of any mistake being made. The occurrence in the jail which induced the smile mentioned in my direct examination, was the remarks made by a phrenologist upon Mr. Worden's head. It caused Worden and myself to laugh, as did others who were present. The phrenologist himself was confined in the jail. I am unable to say whether the prisoner heard those remarks or not; they were made in a cell near him, and some of them were quite amusing. When we laughed, I noticed that the prisoner smiled also.

I am unable to say what the prisoner could do ten years ago that he cannot do now. He held up his head then, and can now, but he does not carry his head now as he did then. He was a straight lad, but is not straight now. His eye is a pretty good one. A wound like that which he had received would occasion pain and be sore. I don't know that he felt no pain, but he seemed to manifest little or no feeling. I did not regard that as the evidence, but only as one circumstance going to show insanity. I had some reason to think he felt some pain, but he manifested it but slightly, if at all.

His not complaining may or may not be evidence of insanity. By his mind being impaired, I meant that he was suffering dementia, and delusion. I cannot tell how long he has suffered from dementia. I think that when he killed those people he was as now, deluded. The symptoms of dementia are, loss of power of associating ideas—loss of memory—impairment of moral and intellectual powers—a weakening of perception and comparison—and a general loss of the powers of the mind. The physical symptoms which indicate such a state of mind, are a downcast look—aversion to exertion—indolence—loss of intelligence in the expression of the eye—and, in the extreme stages of it, drooling at the mouth. At the time of the murder the prisoner had the same symptoms as now.

As I have heard the manner of the killing of that family, I can say that there was a good adaptation of means to the ends. His plan was well laid out and well executed. In laying and executing it, I should think there was a good adaptation of the means to the end designed.

Q. Does not that fact indicate an improvement of his faculty of comparison?

A. I do not know that it does.

Q. How did you find his faculty of attention?

A. He was attentive when questioned.

Q. Did he apprehend your questions?

A. He appeared to.

Q. Can you say that you ever knew his faculty of attention to be better than it was when you interrogated him in the jail?

I cannot say that I have.

Q. You say he apprehended the subject that you conversed about—did he not apprehend the facts which he related.

A. The first time he undertook to tell the story he was confused. At subsequent times he was tolerably accurate.

Q. His accuracy indicated accuracy of memory did it not?

A. In some respects it might so indicate, yet that alone would not show his memory to be good, generally.

Q. Doctor, suppose him to have been perfectly sane, might he not have given a false account of the murder?

A. He might.

Q. And he might not, I suppose?

A. Of course.

Q. Do criminals generally, whose crimes are detected and well known, give a true or a false account of them?

A. I am unable to say whether a majority of criminals do, or do not give a false account; but I have no doubt that some criminals frequently give a false account.

Q. Are you aware that criminals generally refuse to make any confession until proof is found?

A. I am not; yet it would be perfectly natural that it should be so.

Q. What inference do you draw from the fact of his taking the horse?

A. I think that perhaps the taking of the horse was to repay himself for the debt due him.

Q. What debt?

A. For his imprisonment. I do not doubt that he honestly thought there was a debt due him, and that he was entitled to his pay.

Q. But how can you infer that he honestly thought that he was entitled to that horse?

A. From his conduct and assertions I think he thought that he had been imprisoned wrongfully, and that he had a right to recompense. This was his delusion.

Q. Did he say any thing more than you have named, upon which you base your opinion that he thought he was entitled to pay?

A. I do not recollect of any other remark.

Q. Do you think the stealing the horse to go away with, is itself any evidence of insanity?

A. I do not. I suppose he knew what the penalty was, and intended to escape; but I think, nevertheless, that he was acting under a delusion.

Q. What particular delusion in this instance?

A. The delusion that he must and ought to have his pay.

Q. Do you think he calculated to take the horse?

A. I presume there was no forethought about his taking the horse—that he thought of it after the murders.

Q. Do you regard his ability to endure pain as a symptom of insanity?

A. Great insensibility may be, and I think is.

Q. Which kind of insanity does it indicate?

A. It is not safe to say that one particular symptom defines either of the divisions or varieties of insanity. All taken together, in this case, indicate dementia and delusion; it may not be easy to tell which of the several divisions one particular may indicate. All taken together, in this case, indicate dementia and delusion.

Q. How do you define dementia?

A. Dementia is a diminution, an impairment or decaying of the powers of the mind.

Q. How do you define idiocy?

A. Idiocy comes from *idiotia;* and indicates a want of mind from birth.

Q. What is mania?

A. Mania exists where the mental powers, or a portion of them, are excited into unnatural activity. It manifests itself by raving; but idiocy and dementia do not.

Q. Is dementia a gradual or sudden disease?

A. It is gradual—a gradual impairment of faculties.

Q. How much are the faculties of Freeman impaired?

A. His faculties are not entirely gone, but are worse than they once were.

Q. Is dementia perceptible, when it commences?

A. It may begin imperceptibly, and increase to imbecility.

Q. What class do these delusions belong to?

A. Delusions such as his, more properly belong to mania; and I think that viewing the delusion and the partial dementia, he labors under a complication of mental diseases.

Q. But does not the fact that he has such powers of memory, conflict with the idea of dementia?

A. In such powers as he has, I can see nothing in conflict with that idea.

Q. You think, do you not, that he thought, when he had slain that family, he would be hung, unless he fled?

A. I have no doubt he knows that the penalty of murder is hanging; but he thinks it should not be enforced in this case, because he has done nothing but what is right. He is under that delusion.

Q. Are you entirely confident that the smile you speak of, which you saw in his cell, was not induced by the amusing remarks of that phrenologist?

A. At first I thought it was on account of that; but afterwards, and while he was narrating the particulars of the murder, in the most shocking part of his story, he would laugh.

Q. Do you infer that he thought he would not be hung for his crime?

A. I have no doubt that he knew the penalty, but thought it should not be enforced. I am of opinion that he thought they would hang him, but didn't think it right to do so.

MARY ANN NEWARK being called and sworn, testified: I have lived in Auburn twenty-six years. Have known the prisoner from a child up. He was a smart boy, what little I saw of him. After he came out of prison last fall, I saw him on the side walk. I nodded my head to him, but he didn't say any thing. He lived at my house a little over a week last spring. He was living there, sawing wood and doing chores, at the time of the murders. I washed for the students of the Theological Seminary, and he carried clothes for washing and which had been washed, to and from the Seminary. He did chores for his board. I lived a little south of Auburn, at a colored settlement called New Guinea. He never said much—never asked me a single question; only talked when I asked him. When I asked him any questions, he answered quick and short-like. His manner of acting was queer-like. He was very still. He wasn't in enough for me to tell how he did act all the time. I never heard him talk about any person at all, nor mention any body's name. During the day of the murder he put snow in the tub, when I asked. When the bells were rung for meeting, which was about six o'clock on the evening of the murders, he was at my house. I didn't see him have any knives. He soon after that went away. He went away in a hurry-like —quick. He was sober that evening. He didn't say where he was going, and I didn't see which way he went. I have seen him since only when he

passed my house in the wagon after he was arrested. He slept in my house up chamber. I don't know of his being up at night while at my house.

Cross Examination.—I mean by his never having any conversation and not asking questions, that he never provoked talk. He did chores. He got his own victuals and cooked it himself. His victuals appeared to be cold victuals. I lent him the cooking utensils. He slept up chamber. His bedroom was east—mine was west. He couldn't make much noise and I not hear him, if I was awake. He slept at home every night he stayed with me. Before he went out on the evening of the murders, he asked me if I had any chores to do. I told him to put some snow in the tub, and he did so. I don't recollect as he said he was a going out. When he went out I was at my work, with my back towards the door. I never saw him have a knife or stick. I was not often in his room. He made his own bed, if it was made. I never saw any knives in his room. Didn't know as he had any about there. Didn't know which way he went when he went away. Peter Williams had been there that day to see him.

Robert Freeman, called and sworn, testified: I have known the prisoner eight years. When Joshua L. Jones kept the American Hotel in Auburn, the prisoner lived there and cleaned the knives for the dining room table. At that time William was such a boy as others; perhaps not as lively as I have seen, but playful betimes. There was nothing deficient about him that I noticed. Whenever we ordered him to do any thing, he seemed to understand it and do it. I have had play spells with him. He appeared to be pretty active in play. Since he came out of prison the first I discovered about him was, he appeared to be downcast. I spoke to him, but he took no notice. I then took hold of his hand and spoke louder, and he said, "how d'ye do?" I discovered he appeared more dull and downcast than he used to. I was here in the court house a good deal during the Wyatt trial, but did not see him here.

Cross Examination.—I don't mean to say he was not here during the Wyatt trial, for I can't tell. I didn't see him here. When he came out of prison I saw him at work, sawing wood—a long job of eight or ten days. I passed him almost every day. All the difference I discovered was his downcast and dull look.

William P. Smith, called and sworn, testified: In the fall of 1843 I was engaged in the State Prison as foreman in the dye house. Had charge of this prisoner there. He seemed to do what he had to do very well, and was willing to do as far as I could see. He behaved well whilst I was there, with two exceptions. Once he had been greasing a pair of shoes, and had placed them on a pile of wood, near to a stove. One of the other hands, in moving the wood, upset the shoes, and they fell. He took a stick and struck the man on the head, who was lame for a week. The other matter was a dispute about some yarn, when he and another convict got to fighting. The keeper flogged him, and he came to me crying, saying to me that he had

been flogged. He said they had been flogging him, and he wanted me to see Israel G. Wood and have him got out, for they were killing him by inches. He wished me to tell Wood how he was abused. I promised that I would tell him.

At that time I considered his intellect very low indeed. He knew very little, not much more than a brute or beast. When I sent him to the Brussels shop, by telling him two or three times where to go and what to ask for, he would go and get it very correctly. Robert Cook, the keeper, called him insane. [The last sentence was objected to and ruled out.] The first time I saw him after he came out of the prison, I asked him how he did, but he made no answer. I was then told that he was deaf. I tried to get into conversation with him, but couldn't make him understand. He appeared different; did not say much; appeared dumpish. He seemed to stand around. I saw him in jail the first week in June. He rose up, and then sat down. I asked about his health. He said it was good. I asked why he killed those people. He replied, "I've been to prison wrongfully five years. They won't pay me." I asked who. He said, "The people—so I thought I'd kill somebody." I asked if he meant to kill one more than another. He said No. I asked why he went so far out of town. He said, "Better chance to fight up there." In reply to questions, he said he went to the door—"wouldn't go in—couldn't see to fight—'twas dark;" that he looked up street—saw a light in the next house, and thought he'd go there, for he could see to fight. I asked how many he killed. He said five. I asked as to the order in which he did it, and got from him that he killed Van Nest first, and the woman next, at the corner of the house. I asked of him if he knew he had done wrong. He replied No. I asked him if he didn't think it wrong to kill the child. He hesitated, and finally said, "Well, that looks kind o' hard." I think I named them all to him, and asked why he thought it was right. He said, "I've been in prison five years wrongfully—five years for stealing a horse, and I didn't do it, and the people won't pay me." I got from him that he had made up his mind that he ought to kill somebody. I asked if he was sorry. He said No. In all my questions about whether he was doing right or wrong, his replies were such as to signify that he was doing right, and had been in prison wrongfully. I asked if he knew there was any such place as hell, where they punished those who steal horses and kill. After I pressed him some time, he said he didn't think there was. I asked if there was any such place as heaven, where people went who do well. He said he didn't know as there was. I asked if he was in jail or in the State Prison. He hesitated some time and finally thought he was in jail, but wasn't sure. I asked if he knew what he was confined there for. He said No. I asked how many he intended to kill. He said, "All I could." He said he meant to fight and kill till some one killed him. I asked him if he expected any one would kill him. He said, "Thought likely there might." I asked if he went to the widow Godfrey's house. He said Yes. I asked what he went

for. He said, "Meant to kill somebody." He said when he got to the house "'twas dark—didn't like to go in." I asked if he had been to Tyler's house. He said Yes. I asked if he found Tyler. He said "No; couldn't find him." I asked if he would have killed Tyler if he had found him. He said Yes. I asked if he could read. He said Yes. I gave him a book, and he run over a kind of jargon which I couldn't understand. I asked him to count. He counted tolerably free up to twelve, and then slower up to twenty-eight, and then went off to seventy or eighty.

There was a change—a sensible change in the man. He did'nt appear to know so much; to have as many ideas about him; as many looks of intelligence. I don't know as I could describe it very well. There was a slowness—dullness—he was slow and short to answer. I thought what little intellect he had seemed to sink lower down from some cause or other. His physical strength and vigor were good in the State Prison. He appeared active, stout, strong and energetic. Now his manners appear more dull, stupid and inattentive.

Cross Examination.—In prison I didn't see any thing to lead me to believe he was crazy. I didn't think he was crazy then. Have seen crazy men; had one in the shop. Had no trouble in seeing that he was crazy. The prisoner had a downcast look in the prison. He was rather bad tempered, I should think. I considered his quarreling about the shoes and yarn, evidence both of bad temper, and of a weak intellect. I went to see Freeman in jail, expecting to testify as to his mind; not with the idea that he was crazy, but merely to compare him with what I knew him formerly to be. I have not formed any opinion as to his insanity. There are some things that go to show that he was insane, and some to balance them on the other side. I said that I thought him a very little above a brute when he was in the State Prison, and I think he has fallen off since. I don't know as he knew any thing then that he don't know now. He knew me in the jail, and he hadn't seen me since the winter previous. I think his being chained would have an unfortunate tendency on his sprightliness. I did not tell Wood of the prisoner's request, because I did not see him for a great while, and then I forgot it. The prisoner's business in the prison under me, was to bring wood, make fires, to bring water, and sometimes I would set him at turning the crank. I asked him how much pay he wanted. He said, "Don't know—good deal." I asked him whether if I would count him out a hundred dollars in silver, it would be enough. He said he thought it wouldn't. I asked him how much would be right. He said, "Don't know." He brightened up, and finally said he thought about a thousand dollars would be about right. There was something in this connection said about killing, and that he was willing to "quit even," and he thought that one thousand dollars would do. I did not see the same smile on the prisoner, when he was in prison, that I see now.

Horace Hotchkiss, called and sworn, testified: I knew the prisoner in

the prison Sabbath school. He was not in any regular class. His knowledge was very little. My impression is that he knew a few of his letters. I endeavored to teach him to read—could see no progress. I think the reason was a want of intelligence. I did not perceive any advance.

I saw him some six weeks ago in jail, and asked him if he knew me. He said No. I asked if he was in the Sabbath school in prison. He said Yes. I asked if he knew Mr. William P. Smith. He said No. I asked him who had charge of the dye shop. He said Mr. Smith. In the course of the conversation I remarked to him that he was soon to be tried for his life, and I asked him what would become of him if he was found guilty and executed. He said, "I don't know." I asked if he knew there was such a place as heaven. He said Yes. I asked what kind of a place it was. His answer was indistinct and inaudible. But in an after conversation, when I asked him, he said he'd go to heaven because he was good. I asked if he knew who Jesus Christ was. His answer was indistinct. I asked if he had seen him. He said he thought he had seen him in Sunday school. He was asked about being in prison, and he said something about pay. I asked who owed him. He said, "Every body."

Cross Examination.—I went to see him in jail in company with John R. Hopkins. I don't know whether it was because he wouldn't or couldn't that he didn't learn in prison. It appeared difficult. He always showed a willingness to learn.

Sally Freeman, called and sworn, testified: I am the mother of the prisoner. My husband died seventeen years ago. I took care of my son till he was nine years of age, when he went to live with Captain Warden. After living with the captain awhile, he lived with Mr. Ethan A. Warden several months. After that he lived with Mr. Cadwell two years. I put him out to live at those places. About six years ago he went to the State Prison. When he was young, and before he went to prison, he was a very smart child. He was always very playful and good natured. About understanding things, he was the same as any other child. I never knew he was foolish or dumpish before he went to prison. After he came out of prison he didn't act like the same child. He was changed. He was deaf and didn't appear to know any thing. As to being lively after he came out, I didn't see any cheerfulness about him. When I asked him a question he would answer, but that was all he would say. He appeared very dull. He never asked me any questions, only if I was well, and that was when he first came out of the prison. From that time to this he has never asked me any questions at all. He has never offered to say any thing to me, except when I asked if he could get work; then he would'nt say much. Since he came out I don't think he has been to see me more than six times, but I have met him in the street and spoke to him. When he came to see me perhaps he would ask me how I did, and then sit down and laugh; what he laughed at was more than I could tell. He laughed as he does now. There was no

reason why he should laugh. He was laughing to himself. He didn't speak of any thing when he laughed. I didn't think he was hardly right, and he was so deaf I didn't want to———(weeps.)

I don't remember any thing else that he said or did. He was not deaf before he went to prison. I asked him how he got deaf. He told me his ear had fell down, or some such foolish answer he gave me. When he came to see me he would stay an hour or so. He generally sat still. He would speak to others if they spoke to him. His answers were pretty short. I did not see him for about two months previous to the Van Nest murders. I didn't know the Van Nest family. I never heard him speak of them. I saw him in jail the first of June. I went in to see him, and asked him how he was. He laughed when I went in, and said he was well. I asked him if he knew what he'd been doing. He stood and laughed. I asked how he came there. He didn't say much of any thing, but stood and laughed. I stayed but a short time—a few minutes. When I asked questions, I got no answer at all. I felt so bad, he looked at me so, I didn't know what he did say. I think he was altered a good deal from what he was before he went to prison. When I went away he didn't bid me good bye, nor ask me to come again. I am in my fiftieth year. He has an uncle that is, and an aunt that was crazy. William has a sister who isn't very smart. I don't think William is in his right mind, nor that he has been since he came out of prison.

Cross Examination.—I saw him about six months before he went to the State Prison, but I didn't see him in there at all. He took care of himself for the five years before. I used to see him almost every week when I was here. The change I noticed was, he acts very foolish and don't seem as though he had any senses. I've seen him take a book and try to read, but he couldn't. He never learned to read as far as I knew, more than his a-b-abs. Captain Warden sent him to school a little when he didn't run away. I went to see him in jail on the first day of court, at the suggestion of Mr. Morgan. When I went in he didn't say any thing, but stood and laughed. When I asked how he came to do it, he made no answer. I asked nothing else. Nothing more was said or done that I can tell you. I have three children—had five, but none of them are crazy but this one. Before marriage, my name was Sally Peters, and I was born in Berkshire, in the State of Massachusetts; some of my ancestors were red people, of the Stockbridge tribe. William is part Indian, and part Negro.

Deborah De Puy, called and sworn, says: I am twenty four years old. I knew William before he went to prison. I knew him as well as other colored boys. I associated with him. He was bright as any body else. He was very cheerful. I have been with him to balls and rides. He acted very smart on such occasions. I talked with him often. I never discovered any deafness or lack of intelligence. After he came out of prison there was a change. If I talked to him very loud, he would talk; say very little only

to answer me. He didn't act cheerful, but very stupid—never said any thing until I talked to him. He never talked to me as he did before he went to prison. He had a strange smile. He would laugh very hearty without any thing to laugh at. He wouldn't know what he was laughing at. He knocked at the door; I'd let him in and he would sit down and laugh. I'd ask what he was laughing at. He said he didn't know. When I asked him questions, he would either answer "Yes," or "No," or "I don't know;" only once I asked him how his hearing was hurt, and he said they struck him on the head with a board, and it SEEMED AS IF THE SOUND WENT DOWN HIS THROAT. I don't think he is in his right mind now, nor that he has been since he came out of prison. The reason is that he never used to act so silly and sit and laugh so, before he went to prison.

CROSS EXAMINATION.—I live below the Female Seminary in the west end of the town, but I don't know the name of the street. My husband's brother married the prisoner's sister. My memory is good. I remember William well and when he went to the State Prison.

Q. What is that husband's name, that you speak of?

A. Well, his name is Hiram De Puy.

Q. Does he live upon that street which you find it difficult to name?

A. He lives where I do, of course.

Q. Then you live together.

A. I don't know as it is any body's business whether we do or not.

Q. Perhaps not; but I suppose you can have no objection to telling me how that is.

A. But how do you know I haint?

Q. Well, Deborah, I thought that perhaps you would oblige me so much as to answer that.

A. Yes, we do; but I can't answer any more questions.

Q. Never mind, Deborah, we've got along with that, and will turn to a more agreeable subject. Do you recollect when you were married?

A. Do you s'pose I'm going to answer such questions?

Q. Yes; I rather supposed you would like to tell me about that.

A. Suppose I couldn't tell?

Q. Suppose you should try?

A. Well, s'pose I shouldn't?

Q. I think you had better tell me that, Deborah.

A. I shan't answer such foolish questions.

Q. Will you tell me where you were married?

A. If you'll come down to my house, I'll tell you all about it, but I won't here.

Q. It may be inconvenient for me to come, Deborah, and therefore I shall have to insist upon your answering me now.

A. Well, I shall not.

The Court.—The witness must answer.

Q. The court thinks you ought to answer. Be kind enough to inform me.

A. I couldn't tell you where I was married.

Q. Did you have a large wedding party on the occasion?

A. I couldn't tell how large the wedding was.

Q. Didn't you know something about it?

A. Of course I did.

Q. Didn't you have more of the wedding than any body else?

A. Of course I did, but I can't tell.

Q. Can you tell who performed the marriage ceremony?

A. I couldn't.

ADAM GRAY, called and sworn, testified: I have known the prisoner sixteen or seventeen years. He was a smart boy, and was very active. I always thought him to be a pretty cunning kind of a boy. I think there is a change in him. It didn't seem to me that he knew as much as he did before he went to prison. Don't seem to talk as much, have so much life, nor seem so sensible. Last winter he boarded with me two months. He would get up nights, late, take his saw and go out as if he was going to work, and come back and go to bed. He would try to sing, but I couldn't understand what he said. He made a noise appearing as if dancing. He slept up stairs, and used to make a noise in the night, and be dancing. I never asked what he meant by it. Never saw him drunk. Never had any reason to suppose he drank, except at one time. Before he went to bed, one time, he was noisy, and appeared to have been drinking. After he came out, I told him to go to meeting. He said, sometimes, he'd go, and sometimes, he didn't want to go. Sometimes he had a book and would try to read, but I couldn't understand his reading.

CROSS EXAMINATION.—He left my house last January. I never said any thing to DePuy about Freeman's getting up nights; only one day DePuy said to me, "You know'd William when a boy." What Freeman got up and went out for—whether to drink or not, I don't know. He went out twice, that I know of. He made a noise three times. I was lying in bed, the time I speak of his being drunk. I don't say he was drunk, but he came in and out, and hallooed, stamped, and went on; stayed around an hour, and went to bed. I don't know how he got his liquor; I had none in the house. I don't remember of his saying any thing all that time, except when I asked if he wanted any thing.

THERON GREEN, called and sworn, testified: I was keeper in the Auburn State Prison five or six years ago, and had charge of this prisoner there about a year. The condition of his mind was such that I didn't think he had much at any time. He could do the work assigned him; he was called a half pay man. He worked at blowing the bellows and striking at the forge. He kept at this work while I was there. He was slow in his movements. I judged he did his work as well as he could. I never discovered him viola-

ting the rules of the shop by talking. Tell him to do a certain amount of work, he would do it in his way, sometimes. His way was slow, awkward, dull. He was downcast; would have freaks of laughing. I couldn't tell what he was laughing at. I have perceived the same laugh here. He was rather dull. On Sundays I tried to instruct him in his cell, but with poor success. He was so dull he could'nt learn. He would violate the rules by going to sleep Sundays in his cell. He was not, however, flogged for that. I never reported him.

Q. Why did you not flog him?

Objected to, and objection sustained.

I don't think he was totally destitute of knowledge of right and wrong. I told him to do a thing and sometimes he would, and sometimes he wouldn't do it. My opinion of him then was, that he was in some respects accountable, and in other respects not accountable. He was very different from any convict I ever had charge of, in his manners and conduct. I thought he was very ugly, irritable, malicious and bad tempered. He was deaf. I should think his capacity as a thinking, reasoning man, was very limited—very low. He hadn't enough intelligence to warrant me in punishing him for violating the rules. I think he ought not to have gone at large, and that remark was made when he left the shop. I should think he had as much capacity as a brute beast; don't know as he had more; none to spare more.

Cross Examination.—I sent him for a pail of water once and he didn't go. He didn't take the letter which I sent to the hall. I sent a man after him who found him in the yard. The blacksmith for whom he blowed and struck used to complain that he didn't work right. I used to talk to him; it would, however, do him no good.

Philo H. Perry, called and sworn, testified: I have seen the prisoner and have tried to converse with him. I also heard Gov. Seward make the attempt to converse with him, but to little purpose. The prisoner did not seem to know much about a court, or trial, or witnesses, or a jury. He said something in an indistinct and incoherent way about his having been in prison five years, and wanted pay for it. I could not come to a satisfactory conclusion in my own mind about him. I think he has no idea of the enormity of his offence, although he may know what he was doing. He has scarcely any intellect at all, as far as I can judge, and is almost an idiot. When I was talking to him about the trial, I asked him if I should tell the jury that he was crazy. He said No. I asked if I should tell them that he was sorry. He said No.

Cross Examination.—I did not know the prisoner until after the Fleming murders. I did not see him in jail until after a plea of present insanity had been put in for him by Gov. Seward. I heard him try to read, but couldn't. He seemed to know the letters of the alphabet, and did call them correctly, but he could not read the words. I think he has some mind left, yet what he has seems to be in a singular condition. I do not say that he is

insane. I think his difficulty consists more in the want of intellect than in any derangement of what he has. He may be deranged, but he looks to me more like an idiot.

Dr. Charles Van Epps, called and sworn, testified: I reside in Auburn, and am a physician. I received my diploma from the New York University, in 1825, and since that time I have been in practice. I know the prisoner. I am of the opinion that he has lately been insane. It is not probable that the species of insanity with which he is afflicted came upon him in a very short period of time. It is possible for dementia to happen suddenly. Those who have this sort of insanity generally have thicker skulls than other people, and as they do not grow as fast as other parts of the body, a pressure on the brain is produced, which induces insanity. Dementia comes, however, from many diseases which are gradual. I knew the prisoner when a nursing babe, and until he was three or four years old. He then appeared as bright and intelligent as children generally at that age. Now he appears not to have the intellect of a child five years old. He answers questions with a child-like simplicity, regardless of the consequences, and as if he didn't know them. For instance, I asked him day before yesterday whether they had taken him up to the court—

Attorney General:—I object to any testimony relating to this prisoner, derived from examinations since the verdict of the jury upon his present sanity. That question has been settled by a verdict.

The Court decided that the question of present sanity had been tried, and a verdict rendered on the sixth day of July, instant, and that the question of the present sanity could not be again re-tried; that the question now on trial in connection with the murder, was whether he was sane at the time of the commission of the crime; and that the evidence of insanity must be confined to facts before and at the time of committing the act, up to the sixth day of July, instant, when the verdict of sanity was rendered.

Decision excepted to.

Q. What is your opinion as to whether the prisoner at the bar is insane?

Objected to, and objection sustained.

Q. What is your opinion as to whether the prisoner at the bar was insane at any time previous to the sixth day of July last?

A. I think he was insane at and before that time. I ground this opinion upon the history of the man, and what I myself knew of him. It appears that his senses have diminished—decreased from childhood—and that is to my mind evidence of insanity. He has been laboring under an impression that he ought to have pay for the time that he was in prison, and that somebody owed him, and I have not been able to make him believe to the contrary. That I consider an insane delusion. He has an impression that every body is against him, and that was why he wanted to kill somebody. He had nothing in particular against Van Nest, yet insane people generally kill their best friends sooner than they will their enemies. He thinks he can read,

but cannot. He is under a delusion in that; yet he appears to be anxious so show us that he can read. His smile and his general deportment is like persons who are demented. I call his insanity dementia, or that species of insanity which is accompanied with a loss of the intellect. Idiocy is a perfect loss of the intellect, and where it is not congenital it is called dementia. There is some intellect left in the prisoner, and therefore his case is partial dementia. As to the design and calculation, I have known insane men to do acts evincing more than ordinary design. I have heard of nothing connected with the murder of Van Nest, that an insane man would not be likely to do. [Witness here related the dialogues had with the prisoner in jail, which were the same substantially as those had with Warden and Austin.] I think that he thinks he has a right to kill people in satisfaction of his claim, and that is a delusion. There is not the least doubt that at the time the prisoner committed the act, he was insane.

Q. Have you, since the sixth day of July, made any observations which went to confirm your opinion?

Objected to, and objection sustained.

Cross Examination.—I was born at Kinderhook. I am a Dutchman, like you, Mr. Van Buren. I conversed with the prisoner several times before he went to the State Prison, but I cannot give the particulars. I assisted at a post mortem examination of his father. Prisoner's mother used to be an intemperate woman. She lived with me a while. I then saw the boy passing out and in several times. It would be very difficult to tell what the boy knew then that he does not know now. His head is small, yet it may be as large as Dr. Brigham's—but has quite a different shape. I don't know that I can state any physical change. Derangement attends the action of acute diseases. Dementia does not necessarily come as a consequence of disease. The prisoner's pulse is somewhat remarkable. It is quick without any occasion for excitement, and denotes an unusual condition of the system. I don't think the delusion about pay is a common delusion. I think the prisoner thought it right to get pay. I also think he was under the impression that all mankind were his enemies. Had any dissimulation existed, I think I should have been able to discover it.

James H. Bostwick called and sworn, testified: I am a justice of the peace; live in Auburn, and have known the prisoner since he was a child. I think he was as active when a child as other colored children. I saw him after he came out of prison. He called upon me for a summons for a man for whom he said he had sawed wood. I knew the man—told prisoner there must be a misunderstanding; and I saw the man and found what it was. I declined issuing the summons. A day or two before the murders he came into my office and said he wanted a warrant. I asked for whom. He said, "For those who got me to prison;" that he had been there wrongfully and wanted pay. I asked who the persons were. He said a widow woman and two men; and he mentioned David W. Simson, a former constable, as one

of them. Then, or in a subsequent conversation, he mentioned the name of the widow Godfrey. I asked what he was sent to prison for. He said, "They said 'twas for stealing a horse." I asked if he did steal it. He said, "No, I didn't." I asked who arrested him for stealing. He said that Vanderheyden arrested him for stealing hens, but that he was discharged on that. Such was the fact, as I learned subsequently. He said they afterwards took him for stealing a horse, and the widow woman and two men swore him into prison five years. I told him he had no remedy—that if those persons swore false, it was now too late to punish them for it. He said that he thought it was hard that he couldn't get any pay for his time, and turned and walked down stairs. After he had been arrested for the murder, I caused him to be taken to the house of Van Nest, in order to see whether Van Arsdale and Mrs. Wyckoff, who was then still alive, could identify him. Van Arsdale was there, wounded, and the prisoner was directed to stand up where Van Arsdale could see him. He did so. He was also taken into the yard, that Van Arsdale could see him through the window. Don't recollect as he said any thing. I was myself engaged in taking the testimony of Van Arsdale whilst there. He was then with much difficulty brought back and lodged in jail. There was a large assemblage of people about the house; many of whom were highly excited. I had some reason then to suspect that he had an accomplice, and I urged the people to repress their feelings until a further examination should be had. He was lodged in the jail unhurt, except the wound which he had on his wrist. The next day I visited him at his cell, and there asked him questions about the transaction. I also asked him if he desired counsel. He said Yes. I asked whom. He said he didn't know the lawyers. He said something about having been put in State Prison, and I inquired if he knew who were the persons who put him there. He said the widow Godfrey, David Simpson and Jack Furman. Jack was the man who was arrested at the same time, and who turned State's evidence and got clear. Jack is now himself a convict. I asked if he rode into Mrs. Godfrey's yard the night of the murder. He said he did; and at another time when I asked him if he knew of any body riding into her yard, he said he didn't. I asked if he ever talked with any white man about being sent to prison. He said, "Nobody but Esquire Paine and you." I asked him if a certain person (naming him) had told him that Van Nest had any thing to do with getting him into prison. He said No. I asked him if he met a man on horseback, this side of the house. He said Yes. I asked who he was. He said, "I don't know." I asked if he was a white man. He said Yes. I asked if I should get him counsel. He said Yes. I mentioned the matter to Mr. Allen, subsequently, who acted in his behalf on the examination before me. I put to him a variety of questions, to which he gave brief but pertinent answers. He was very deaf, and did not understand unless spoken to in a loud voice. As to the state of his mind, I can only say that when he came for the warrant it occurred to me that he might be deranged; but he said, "They tell

me I can get my pay now," and other things that looked as if he might be rational. Since then I have thought that my impression that he was insane was groundless. I cannot say that I now think that he was insane, yet his actions were singular.

CROSS EXAMINATION.—When he mentioned a summons, he seemed angry that the man for whom he had been at work would not pay. I found that the man had credited John De Puy for the work, but after I had talked with him, he said he would give the prisoner something. I advised him to take what he could get. When he came to get the warrant, he told me that he was arrested on a canal boat. He said that Vanderheyden arrested him again, and pretended that he had arrested him for stealing hens. I questioned him about the matter and he told me. I cannot now remember all the questions, nor all his answers. On the day when the preliminary trial commenced, I saw him in the jail, and asked him if he didn't know it was wrong to commit these murders. He said, "I suppose it was." I asked if he was sorry. He said, "I was sorry when I got to Syracuse." I asked where he was intending to go when he stole the last horse. He said, "The most I cared for was to get out of the county." I asked what he killed those people for. He said, "I couldn't get any satisfaction and I meant to be revenged."

MICHAEL S. MYERS, called and sworn, testified: I was the district attorney of this county when the prisoner was indicted and tried for stealing the horse. The witnesses sworn, were Martha Godfrey, William H. Hill and John Willard; the latter was known, I believe, as Jack Furman. When the prisoner was sentenced, he looked younger, stood more erect, and looked brighter than he does now.

CROSS EXAMINATION.—There was nothing peculiar about him then. I have seen him since. I have never discovered any thing to make me believe him insane.

JAMES R. COX, called and sworn, testified: I saw the prisoner near the Sand Beach Church, about eight o'clock in the evening of the murder. I was in a cutter; he was walking and had a stick in his hand partly concealed under his coat. As he approached me, he stepped out of the track and looked at me, turning his eyes as I moved until I had passed him. I have since asked him why he didn't kill me. He said, "I thought some of it." Looked then as he does now. When I asked about his hand, he lifted it up and then let it drop, but gave no answer. I have seen him when I could not get the semblance of an answer. He appears to know but little of the nature and consequences of crime. I am not able to say that he is particularly deranged, because I do not think that he has much brain to be deranged. I think he approaches an idiot. If he ever had much brain I should think it had decayed.

DR. AMARIAH BRIGHAM, called and sworn, testified: I am a physician, and have charge of the State Lunatic Asylum, at Utica. I was subpœnaed

to attend the preliminary trial of this prisoner. Upon arriving here I was requested to examine him in respect to his mental condition. That was about six weeks ago. Accordingly I visited him several times, conversed with him, and listened to the conversation of others. I heard all the testimony given on the preliminary trial, and I have heard or read all that has been given on this. I have endeavored to bestow such attention to the case as should enable me to form an accurate opinion. I believe the prisoner to be insane.

I had heard much of this prisoner before I saw him. I had heard that he had killed those who had sent him to the State Prison. I had also heard that many supposed that if his actions indicated insanity, he was feigning it. My first examinations, therefore, were directed to that point, until I satisfied myself that he was not feigning insanity. I think I could not have been deceived about that; and now I suppose there is no one who thinks he is feigning insanity. After saying that there has been scarcely a fact relating to his mental condition which was not known to me as the result of my own observation, I proceed to say that I asked him what he could prove in defence of himself. I asked if we should say he did not kill the folks. He said, quickly, No. I then asked him if we might not say so. He said, "No, that would be wrong. I didn't do it." Some one then asked him if we might say he was crazy. He said, "I can't go so far as that." I asked him again what he could prove. He remarked something about having been in prison five years for stealing a horse, and that he didn't steal it. I asked him if he were sorry for the act. He sometimes said No; and sometimes, "I don't know," in reply. His words were spoken slowly, and somewhat incoherently. In answer to a question whether he was sorry he had killed that little child, once he said to me, "I don't know," and once, "You may say that," but it was slowly said. He laughed when I mentioned the child. I continued the examination, as I before testified, (ante 53) until I became satisfied that he was not feigning insanity, but was actually insane.

There is some difficulty in the case, from the want of facts concerning his history, and also on account of his color. My experience is that insanity in colored people cannot be so easily detected from the countenance as in white people. That peculiar pallor, which oftentimes attends insanity, cannot be so easily detected in colored people as in white people. In this case there is some evidence going to show that he is paler than he formerly was.

We learn from the testimony in this case, that there have been at work the most exciting causes of this disease. The prisoner was predisposed to insanity. Some of his ancestors have been and one now is insane. There is no disease so likely to spread in families in which it has once appeared. It is estimated that about one half of the insane have, or have had, insane, ancestors. In all doubtful cases of insanity the fact that insanity prevails in the family of the person, is entitled to great weight in the formation of an opinion respecting him.

On the preliminary trial in this case, I gave reasons for believing the prisoner insane, which I must repeat. I then remarked that the prisoner seems to have been an active youth, with perhaps not quite as good an intellect as the majority of colored persons of his age; that he seems to have been left to the indulgence of his passions, without mental, moral or religious culture. That, in my opinion, was one of the predisposing causes of this man's insanity. The indulgence of the passions forms a character that cannot brook control, subjects them to violent emotions, and thus lays the foundation of insanity in the passions and affections.

At a very early age he was confined in the State Prison, where he had various troubles, and was thought by some to be a singular being, and, as some expressed it, a brute. He was disobedient, and for his disobedience was punished severely. He got into a violent passion for very trivial causes; was apparently ready to kill a fellow convict for moving his shoes, and acted in the manner I have been accustomed to see crazy people act. In the prison he seems to have become deaf. Deafness, however, is not of itself a symptom of insanity, yet it is often a concomitant, and their combination forms incurable insanity. When combined, I have never known a patient to recover. The reason probably is, that the same cause which destroys the hearing, or affects the auditory nerve, extends also to the brain itself.

He then came out of prison, and so far as I could gather from all the testimony, he was changed. He was a lively, active, sociable lad when he entered the prison, but was taciturn, dull and stupid when he came out, and as his mother expressed it, "he wasn't the same boy; he acted as if he didn't know any thing." This I regard as a characteristic of insanity. So common is this change of character in insanity, that many regard it as necessary to the definition of the term. A prolonged change of character, without any evident external cause, is given, in many works on insanity, as a characteristic; and the cases are almost innumerable where such changes have come within my own observation. A mother loses her child, or a man meets with a reverse of fortune, or has something which has created great anxiety of mind; and soon after, it is perceived that his character is changed; not but that he knows people as well as before, and talks with them; not but that he has memory; but he has become sad, gloomy and unsociable, and without that interest in things which he formerly had. This state often exists for weeks and months unperceived, unless by intimate friends, until some delusion, or other evidence of insanity, is observable, or some outbreak occurs. Then all notice what had been generally unobserved before—that a change had taken place, and that the person was insane. In this way insanity very commonly commences. The change of character and of the moral qualities often precedes any perceptible derangement of the intellect. In the case at the bar I think this change of character has been proved.

I have observed, that we knew but very little of him whilst he was in the State Prison. Some of the witnesses, however, noticed the change. Dr.

Hermance, in conversing with him, thought him deranged. Then he had disturbed nights; often was up in the night, and was noisy. Than that, I know of no better evidence of insanity. So confident am I that sleeplessness is a characteristic of insanity, that I have spoken of it in a published article on insanity as one of its most indubitable symptoms; and that article, I notice, has been extensively copied and quoted. I can attest its truth from my own experience and observation of the insane. It is true, that in some cases insane persons sleep well, but, in general, the insane have paroxysms and are apt to get up nights. I cannot account for the conduct of the prisoner, in this respect, on any other supposition than that it was the consequence of disease, of which I have testified.

His going to a magistrate for a warrant, without any definite notion for whom; declaring that he would have one, after he had been told that it could not be issued; his tender of twenty-five cents; his getting into a passion in the office of the magistrate; his inability to give any connected account of the injury of which he complained, and for which he wanted the process,—all indicate an unnatural, if not irrational, condition of mind. We next come to the act itself, for which he has been arrested and indicted. It was a dreadful tragedy, and yet, as bloody as it was, and as deplorable as it may be, I cannot but regard it as the result of insanity. I cannot believe that a sane man, in the full exercise of his intellect and moral feelings, could do such an act, unless the provocation was very great, or the motive very powerful and strong. Similar cases have occurred in lunatic asylums, but I am not aware that history records any case of the kind happening elsewhere. Quite recently, a man killed two patients at the Baltimore Hospital, and was endeavoring to massacre the whole of them. He was so well as to be about, when the sudden paroxysms came on him. And the manner of his doing it; the shedding of so much blood; the killing more than could have been necessary for any supposable purpose, and the celerity with which it was done, all were regarded as evidence of insanity. I have always observed that the insane act much quicker than the sane. They will tear their clothes into inch pieces, destroy their beds, and break their bedsteads, in a period of time so short, that one could not suppose it possible for them to have done it.

In the case of Griffith, in Chenango county, for killing, the witnesses expressed their astonishment at the quickness with which the deed was done. Here, in the case at the bar, the prisoner must have entered the house, went into different rooms, had some scuffles, killed four persons, looked into various windows, stolen a horse, and rode it half a mile before Williamson had walked that distance. It seems as if he had planned and designed it, made preparation for its accomplishment, indicating the possession of mind that some think incompatible with insanity. Every day's observation, however, convinces me that it ought not to be so regarded. The insane are as adroit in planning and scheming to get away, or in accomplishing their purpose, as

the sane. The case of Hadfield, for shooting the King, is in point. He had made a full and careful preparation, had obtained his pistols, and deliberately went to the theatre expressly to shoot the King. So with a patient at the Asylum at Utica, who had killed her father, and intended to kill her mother. She prepared every thing beforehand. I might refer to many other cases, but the mention of these will illustrate my idea.

That the prisoner undertook to escape, seems to many to be inconsistent with insanity. Yet, when I see patients every day doing wrong and adroitly contriving to conceal it; when I know that they have done the act; when I know numerous cases where such insane persons try to escape after having committed heinous offences, I do not think it ought to be so regarded.

A man by the name of Thomas Sanderson, from Chautauque, now in the Asylum, known by many to be insane, was left with a young man threshing in a barn. Whilst there, he killed the young man, by stabbing him more than one hundred times with a pitchfork. He then took up the boards and buried him under the floor, then took a horse and fled, but was overtaken by an officer, and, after a struggle, in which the officer was wounded, he was arrested. He is now in my charge, at the Lunatic Asylum. Since he has been there, he has attempted to cut the throat of a patient. He eats by himself. We dare not trust him where there are any instruments with which he can do any injury to others. Rabello, in the State Prison of Connecticut, whose case has been published, is another instance. He killed a boy, and then ran off. These cases show, that, in the attempt to escape, there is nothing incompatible with insanity.

Since the arrest of the prisoner at the bar, there have been various attempts made to ascertain whether he is insane. To many, the fact that he remembers, that he gives a rational account of many things, and repeats them several times, carries the conviction that he is sane. That appears to be evidence to some that he has reason enough left to control his actions. But to my mind that does not carry such a conviction. Living, as I do, with those who exhibit as much intellect as any person in this assembly; whom I daily employ to write letters, to paint portraits, to play on musical instruments, to compose and deliver orations, which would do credit to men of learning and general intelligence; and when I know these people are as deranged on certain subjects as any person ever was, the fact that the prisoner remembers and repeats, does not carry conviction to my mind that he is sane. But the prisoner does not either remember or repeat well. He is dull, and stupid, and ignorant, and has but little intellect of any kind. And I think every one must have been struck with the fact, that all who have examined him have found it necessary to come down to simple questions in their examinations—to putting questions which we would not think of putting to a man we considered sane. Such questions as "will you settle for this watch?" as put by Dr. Bigelow, and others who have testified on this

trial. Such questions seem to indicate, that the persons interrogating the prisoner considered him a mere child in intellect.

I agree with Dr. Spencer, that his pulse furnishes no evidence one way or the other. Whilst many insane persons have a very rapid pulse, that of others is too slow for ordinary health. The rapid changes, however, from sixty-seven to one hundred and twenty, betoken something not exactly healthy. It indicates that nervous irritability alluded to by the doctor, which we see among the insane. It is not itself insanity; yet nervous irritability is akin to it, as a disease of the nervous system is insanity. The prisoner never asks a question, except for food, for tobacco, or about his wound. He has not asked for or about his mother, nor about any other person. Unless I suppose him bereft, by disease, of all those feelings, hopes and fears which every one in a natural state possesses, I know not how to explain this. It is, however, so characteristic of cases of this kind, that it adds to my conviction of his insanity. Kleim, who killed a woman in New York, and was sent to the Asylum above two years ago, always answers readily, but never asks a question on any subject whatever.

The prisoner seems entirely indifferent to his fate, and yet has strong animal appetites—he asks for tobacco, yet apparently cares nothing for his trial. His total indifference I cannot account for on any other supposition than that it is the consequence of his disease. His counting and reading is another circumstance worthy of notice; not, however, because he cannot count or read, but for the reason that when he counts beyond twenty-eight he appears just as confident that he is counting right above that number as below it. The same thing has been noticed of his reading; and the surprise is that he does not know that he cannot read. A child may do this; but when it gets older, although it may practice it, it knows it is not reading. The prisoner's insensibility to pain has been mentioned by the medical gentleman who dressed his wounded arm. On dressing it, Dr. Fosgate has observed that he exhibited no feeling—that he seemed to pay no attention to it. Although many insane persons are sensible to pain, others are not. We put setons into their necks, and perform other operations upon them, and they perform them on themselves. When the wounds are being dressed they show no suffering. I had a female patient at the Asylum who would not eat. We fed her with a stomach tube. To resist us she sewed up her mouth strongly. I cut the stitches out, but when doing it she exhibited no more feeling than if I had been at work on a piece of leather. And yet the lips, in health, are very sensitive to pain.

The external appearance of the prisoner in his cell, and as he sits at the bar, carries the same conviction to my mind that it does to the minds of Doctors McCall and Coventry. His total indifference—his abject and demented appearance, and his peculiar laugh, which all must have seen, although no one could imitate it, which comes on when nothing is going on that he ap-

pears to notice, are indicative of mental disease. In the jail, when inquired of about the offence which he had committed, he laughed; and when I asked him if he was not ashamed of himself, he laughed again. In court I have observed it when there was nothing to excite it, so far as I could discover, and yet I have observed him very attentively. Some have thought it not a little strange that he should smile under the circumstances in which he is now placed, and yet they do not recognize it as an indication of a diseased mind. Now, when I see this every day, in demented persons at the Lunatic Asylum, and particularly on the Sabbath, when clergymen are preaching to us, I conclude that it results from disease. I know nothing in physiology or pathology that accounts for it, and yet I am in the habit of seeing it, although I have never heard it explained.

I think, from the testimony, it may safely be concluded that soon after the prisoner went to the State Prison, or about that time, he became a little deranged; that like most insane people, his mental condition varied; that he was sometimes calm for months, and then excited and more under the influence of deranged feelings—more of a derangement of the passions and feelings, than of the intellect, at first; that the intellect finally took up the delusion, and under that delusion he tried to get pay. With the intellect that he had, he, after he left the State Prison, tried to grope about and get redress for supposed wrongs, and community not paying him as he supposed they ought, he committed this awful deed, under the strange delusion that if he killed around a while, as he tried to express it, they would pay him. He may not have had any definite object in view, as insane delusions are often not clear, but dim and varying.

At any stage of this remarkable case, had it been submitted to me, I should have admitted him into the Asylum as a patient, and should have assured those who brought him that his case was incurable. He is a most dangerous being, and ought never to be permitted to go at large again for a single hour. His pulse indicates that something is the matter with him. His flight is not any evidence to my mind, one way or the other. His eating at the time of his arrest, shows such a state of insensibility as characterizes the insane. He has got into a state of approaching dementia. It is not however complete, as in case of a total loss of the faculties of the mind.

There is nothing mysterious about insanity when considered as a disease of the brain. It is such a disease; and I have never seen a case where, after death, marks of disease could not be found. It is, in common parlance, said to be a disease of the mind. But the mind is immaterial—if material, the mind would die. Being connected with the brain, whenever the brain becomes diseased, the mind becomes disordered just as the stomach becomes diseased when the digestion is bad. The brain is one of the most delicate organs of life, and the least affected by remedies of all.

In answer to the question relating to the authority of writers, I may say

that Dr. Ray is very high authority, and Esquirol has had great experience. Both are very high authority on the subjects upon which they wrote.

Cross Examination.—I was examined in respect to the prisoner on the trial of the preliminary issue. I then said I believed him insane. As to medical authors, I think Esquirol the highest authority on the treatment of the insane. He devoted about forty years to the treatment of the insane in one of the greatest institutions in Paris. There have been some improvements on his system. Dr. Beck is also very high authority on medical jurisprudence. Taylor is pretty good authority as far as he goes. He is professor in one of the Medical Colleges in London. Beck is a professor, and resides at Albany.

Q. What are the symptoms of dementia?

A. The loss of some of the powers of the mind.

Q. How does it affect the memory?

A. In dementia there is sometimes a loss of memory and sometimes not. In complete dementia all is lost.

Q. How is it with attention?

A. Attention is usually lessened.

Q. How is it with the senses?

A. As a general rule, there is no great impairment of the senses.

Q. How is it with the eye in particular?

A. It is sometimes affected, but sometimes it is not.

Q. How is it with the coherency of the patient?

A. Those who are partially demented, sometimes exhibit no incoherence, yet sometimes they do.

Q. Is dementia common to young or old people?

A. To old people we apply the term, senile dementia.

Q. Is that the most common form?

A. I think it is not.

Q. Is loss of memory so common that dementia and forgetfulness are sometimes considered synonomous?

A. I do not know but they are used by some writers as synonomous terms. I do not so use them.

Q. What do you call the dementia of the prisoner?

A. Partial dementia. Most of his mental powers have partially decayed.

Q. Which of them?

A. I should think his memory and attention.

Q. When could he remember better than now?

A. I suppose he could remember better than now, when he went to the State Prison?

Q. Who swore to that?

A. I may not be able to name them, yet witnesses have sworn that he was a smart, bright, active boy.

Q. When was he more attentive than now, making an allowance for his deafness?

A. I don't know that there is any positive testimony relating to his attention before he went to prison; yet from all I have learned of him, I conclude that it was better then than it has been since.

Q. Do you agree with those who call the prisoner's difficulty monomania?

A. I think he had homicidal monomania.

Q. Do you think he had homicidal monomania when he killed those people?

A. That is my opinion.

Q. What are the symptoms of that disease?

A. Any insanity is called homicidal, when connected with homicide.

Q. How many cases of that kind have you ever seen?

A. A great number. I have had several under my own care.

Q. Do you reckon in this class every crazy man who ever killed any body?

A. I do, where the killing was done during the existence of insanity.

Q. How many homicidal monomaniacs get cured?

A. Three women have been cured, or considered so by their friends, and were taken away against my advice. I do not believe they ever get perfectly cured.

Q. What does Esquirol say of such cases?

A. I believe that he says that they become raving maniacs and die.

Q. Is homicidal monomania preceded by any symptom?

A. It is sometimes a sudden impulse.

Q. Is it possible to tell when it is cured?

A. Yes; but it is impossible to say whether it may not come on again.

Q. Have you any law that enables you to keep in the Asylum a man pronounced by twelve jurors sane?

A. I know of none.

Q. If this jury should acquit the prisoner, and he should be cured tomorrow, could you keep him in the Asylum?

A. There is a law in relation to insane criminals acquitted; passed April 7, 1842.

Q. Do you think there is any law to keep a dangerous man, who is sane, in the Asylum?

A. I think a man who had killed another, and should be acquitted on the ground of insanity, ought not to be permitted to go at large.

Q. When examined before, did you state you considered the proceedings to get a warrant evidence of insanity?

A. I cannot say how I expressed myself, yet the proceedings before Esq. Bostwick made some impression on my mind.

Q. Do you think you are a better judge than he is whether the prisoner was insane then?

A. I would not have the jury attach much importance to any opinion I may give in such little matters. The jury can judge of them.

Q. Do you consider yourself a better judge than Esq. Bostwick?

A. I think I can judge of it better than one who has observed it less.

Q. What do you say of ordinary physicians?

A. Ordinary people and physicians who have but little experience on the subject, could not judge so well in doubtful cases as one more experienced.

Q. What was there in the prisoner's application for a warrant, denoting insanity?

A. His going into the office and then not being able to give a consistent and connected account as to what he wanted, was some evidence of derangement.

Q. Suppose the jury find that he did make a consistent statement?

A. If his statement were rational and consistent it would not, of course, prove any thing one way or the other.

Q. In the progress of this investigation have you been unbiassed?

A. I have been as anxious to find this man sane as insane.

Q. Have you been as anxious to satisfy yourself of sanity as insanity?

A. If there is a man in the world who should be anxious that this man should be put out of the world it is myself. But, notwithstanding the horror of having this man come into my family, I cannot swear differently from what I have. I could not ever have another happy day.

Q. Where a man has a physical disease, does it not manifest itself by physical symptoms?

A. Where the mind is diseased it always manifests itself by some symptom, I suppose.

Q. Did you testify before, that insane people in the Asylum paint portraits, write letters, orations, &c.?

A. We have patients that paint, write letters, and orations; we have ladies who paint flowers and play on the piano. Last July we had an oration from one insane person, and a poem from another.

Q. Did you state that some of their orations would do credit to statesmen?

A. I probably did, for some of their efforts are very creditable indeed.

Q. You spoke of this dreadful crime indicating insanity. Suppose I should take this knife and kill one of the jurors, what would you say of my sanity or insanity?

A. If you should get up and kill him and then sit down, in the absence of any other circumstance, I should think you insane.

Q. Suppose I were to tell you that I was going to do it, and the juror should apply to a magistrate to bind me over, and then I should do it, would you swear that I were insane?

A. That might or might not vary my opinion.

Q. If I should go out and steal one hundred dollars, and then come in again and sit down, would you swear I was insane?

A. Such a circumstance would, in you, indicate insanity.

Q. If I should take a gun and shoot into the jury box, and kill six of the jurors, would you say that I was insane?

A. I answer as before.

Q. If I should go down to the railroad bridge and saw off the posts, would you swear that I was insane?

A. I think I should.

Q. Why would you swear so?

A. Because it would be so contrary to your character and what I have known of it.

Q. Then if I do an act that you regard as being contrary to my character, and you can see no motive for the act, you would swear I was insane?

A. It would indicate insanity.

Q. Why do you say there has been a change in the prisoner?

A. I obtained that opinion from the testimony.

Q. Whose testimony?

A. That of the mother of the prisoner, Winner, Warden, Deborah De Puy, and Adam Gray. They say they noticed a change.

Q. Then you didn't believe John De Puy?

A. I do not say that I did not believe some of his testimony. I did not rely on it as much as upon other testimony.

Q. Did you hear Deborah De Puy, and did you base your testimony on her statement?

A. I did believe her.

Q. Do you take the character and standing of the witnesses into consideration?

A. I do; and I do believe she knew of the change.

Q. Do you believe the prisoner's mother?

A. I do.

Q. Don't you believe the mother, who is a common drunkard, to be unsafe evidence?

A. No; if drunkards were never to be believed a great many would not be permitted to testify.

Q. If this boy has lived here twenty-one years, don't you believe there are more reputable persons who can prove a change in him, if a change has taken place?

A. No, sir; I don't think I have heard any one who has paid that attention which I should think requisite. Warden, however, noticed a change at the time.

Q. Suppose we bring twenty men who had known him all his life, and who should swear that there has been no change?

A. If they knew him, and had lived with him, and noticed him, I might think differently; if they hadn't noticed the change I should not place as much reliance upon their testimony as if they had.

Q. Do you think his smile is evidence of insanity?

A. I do.

Q. Do you think the smile has been accounted for by other witnesses?

A. I do not.

Q. Do you believe the prisoner could have been insane in the State Prison so long without it being found out that he was crazy?

A. I think the opportunities there not such as to be most likely to detect it.

Q. Do you believe this man could have been undergoing this remarkable change without its being found out?

A. I don't know how many cases of insanity there are in the State Prison, nor how observant the keepers are. From what I know of the management there, I think he might be there five years and his keepers not find it out. It don't appear that he was under one keeper all the while.

Q. You have stated that his uncle and aunt were crazy. Suppose we should prove that his aunt was liquor crazy?

A. The insane are usually fond of liquor, and many people are not insane when liquor is taken away from them.

Q. Suppose we should prove that his uncle Sidney is perfectly harmless, would that have any effect upon your opinion?

A. That would not diminish my confidence much; because where insanity prevails in the family, it may differ in its appearance, and the subjects of it, in character.

Q. Suppose we prove that his grandfather smiled as he does, would that have any effect?

A. I don't believe any such smile as his was inherited, except by disease.

Q. You seem to think the celerity of the act and the number of the people killed was evidence of insanity?

A. Yes, sir. If he had killed Van Nest, only, I should have thought it more probable that the prisoner had had some controversy with him. But his shedding so much more blood than could be necessary for any supposable purpose, and without any motives, I think indicates insanity.

Q. Suppose his purpose was revenge?

A. I cannot think he killed the child for revenge.

Q. Suppose he wanted to exterminate the race and escape detection, after plundering the house?

A. I think he would not have slain the child even for plunder.

Q. Suppose it should be proved that he said he killed the child lest it should make a noise?

A. I don't know as that would vary my opinion any.

Q. This man is part Indian?

A. I suppose so, but I have not attached much importance to that, although some, perhaps, might.

Q. Have you heard of Indian massacres?

A. I have; yet in many cases they have occurred whilst fighting for their country.

Q. Were they fighting for their country at Wyoming and Deerfield?

A. Not always; yet when they were not they had an object in view. I think they were fighting for their country at Pleasant Valley.

Q. Is insanity contagious?

A. In some of its forms I think it has been contagious.

Q. Is homicidal insanity contagious?

A. I don't think that form of insanity is; yet I am always sorry to hear of one case for fear that it will induce others to imitate it. In that way it may, perhaps, be called contagious.

Q. Is suicide contagious.

A. I think it was in the French army, until Napoleon put a stop to it.

Q. Are hysterics contagious?

A. They seem to be catching.

Q. Did you ever hear of an insane man who was slow in the act of committing murder?

A. I have heard of cases where the murder was not rapidly executed. Where they kill with a knife, I suppose it is usually done quickly. I don't know as there is any insanity in the celerity, but I think an insane man will do a thing quicker than a sane man can.

Q. Is a want of moral culture a common cause of depravity as well as insanity?

A. It is.

Q. Wherein is the distinction?

A. The one is a vice, and the other a disease.

Q. Can you always tell whether one or the other exists?

A. It is often difficult to tell where depravity ends and insanity begins.

Q. About restless nights. Is there any proof of them in this case?

A. I think there is. DePuy and Winner testified of them.

Q. Can you tell whether they were caused by insanity or liquor?

A. I can't positively tell; but according to my observation, when a person in liquor gets to sleep he is likely to sleep sound, and is not very likely to get up.

Q. Don't restless nights immediately precede the offence?

A. Well, I don't know as to that; I should think they might, or might not.

Q. Suppose the evidence shows that ever since the murder he has had sleepy nights, what then?

A. I don't think that would alter my opinion; for generally after such an act, a calmness succeeds.

Q. If it were in proof that liquor made the prisoner disquiet and sleepless, and that he had been drinking when the sleepless nights occurred, would not his sleeplessness indicate rum rather than insanity?

A. I think they indicate insanity, not rum.

Q. Your first inquiry was whether he feigned insanity. Was there any occasion for feigning insanity until the plea was put in?

A. The feigning, I always consider an important fact to be ascertained at any time. If he had made up his mind to feign insanity, he might have feigned before the plea.

Q. Would not the safest evidence be what he did, instead of what he said?

A. I should not take declarations, alone, as they might be more easily feigned than actions.

Q. About a motive. Was not the case of Green, who poisoned his wife, a thousand times more aggravated than this?

A. I cannot say that it was. Certainly there were not as many lives taken.

Q. I mean in respect to the motive. There was no motive found for that act.

A. I had supposed that there was, until you informed me to the contrary. I recollect of reading that case, and that I thought there were no indications of insanity in Green.

Q. Suppose you had known that there was no motive for that murder, would that have shown insanity?

A. Well, I have said the absence of motive is a fact bearing on the question.

Q. Did you suspect that Green was insane?

A. No, Sir.

Q. What is an insane delusion?

A. An insane delusion is the mistaking fancies for realities, where the patient cannot be reasoned out of them.

Q. Suppose I should get an insane delusion that one of the jurors owed me and should kill him, would you swear I was insane?

A. I should think that you were.

Q. Suppose I should be told that a witness had sworn against me in a civil suit, and that the witness had destroyed my case, and I should go and kill him, what would you say to that?

A. I should want to know how correctly you were informed.

Q. Suppose I should be informed by Gov. Seward, who was counsel in the case?

A. If it was him who told you so, and you believed it, and the suit involved a large amount, I should think you not insane.

Q. Suppose the suit were upon a note, and the witness swore to my hand writing only?

A. If the suit were a small one, I should think that you must have been insane.

Q. What is the difficulty in telling whether black people are sick or not?

A. We do not see but few colored persons who are insane, and therefore cannot tell as well. I never could so well tell what ailed a colored person as a white one, and my experience is that they are more apt to die when they are sick, than whites.

Q. Does the fact that this man asked no questions, make any difference with your opinion?

A. Yes, Sir.

Q. Do you find that by the evidence in the case?

A. For the most part I do, yet I found by my examination that he did not. One would suppose, however, he would feel some anxiety about his trial, and would inquire about it.

Q. Why do you believe he does not ask any questions?

A. He never has asked me a question, and yet I have seen him a good many times. I thought it very strange that he did not.

Q. You say he is not sorry. Have you heard the evidence of the magistrate to whom he applied for a warrant?

A. I think his evidence does not show that he felt any remorse. I know that he sometimes admitted that he did wrong. I suppose he knows that it is wrong to commit murder, but I do not think when he killed Van Nest that he knew it was wrong to kill him.

Q. About his going out of the county and about being revenged. Did you ever hear more sensible talk than that?

A. I have; and although I have heard sane people talk of revenge, I still think the prisoner was crazy.

Dr. John McCall, called and sworn, testified: I am President of the Medical Society of the State. I have seen the prisoner at the bar, and have examined him in reference to his sanity. I came here before the jury in this case was empanneled. I have not heard all the testimony, but the greater part of it. From personal observation, and also from the testimony, I am of the opinion that the prisoner at the bar, is insane. I have no reasonable doubt of it. I visited him twice in the jail, and put to him a variety of questions about himself and the murder. I asked him why he killed the people. He replied that he had been in the State Prison, and that they owed him. I asked who. He said, "They." I could not gather who he referred to. I asked if he were not sorry—once he said No, and once "I don't know." His answers were all short, and to obtain them, I was obliged to prompt him, and to speak very loud. When I asked him why he killed the child, his reply was, "Don't know." When I asked him if this family had done him any injury, he said No. I asked if he would have killed any one else whom he might have met. He replied Yes.

One morning, during the preliminary trial, I asked where he had been the day before. After hesitating some time, he said, "In court." I asked him for what purpose he was in court. He said, "Don't know." I asked who he saw there. After hesitating some time, he said, "Mr. Doubleday."

I asked what they were doing there. After a few moments he said, "S'pose trying to find out 'bout the horse." I asked if he could read, and he said Yes; but after trying him, I found that he could not. He smiled as he does here in the court room. I asked him if he knew he was on trial. He said, "Don't know." I asked him if he didn't know that he was on trial for killing those people. After a few moments he answered, "S'pose so." I asked him if he had counsel. He said, "Don't know." I asked him if he didn't think he would be hung for killing that family. He replied, "Don't think on't." I asked if he knew what swearing a witness meant. He said, "For trouble." I repeated the question, thinking that he didn't understand me. He gave the same answer, "For trouble." I asked him if he were well, and had enough to eat. He said Yes.

At first I did not know but that he might be feigning insanity, but subsequent examinations satisfied me that he was not. He has not intellect enough, in my opinion, to feign insanity. His brain is diseased. I cannot say when it commenced, or what its first manifestation was. It has, in my opinion, been coming on gradually, and from the testimony, I conclude that it commenced in the State Prison. It is very evident to me that his deafness came upon him whilst there. He was struck on the head, or side of the head, whilst in the prison, and that may have occasioned the deafness, and the same injury may have extended to the brain. It is impossible to say, from the testimony, when his brain at first became diseased. In some cases, inflammation, which destroys the hearing, produces disease of the brain.

The evidence shows that the prisoner has had no education, instruction, or training. His means of acquiring an understanding of the duties to himself and society, have been very limited. When, as in this case, there seems to have been but little intellect, and the propensities and passions are left unrestrained, there is always danger that insanity will sooner or later occur. In my opinion that, together with the blow on his head, has been the cause of insanity in the prisoner. He was predisposed to it from the first, as it had been in the family; or at least, there was a hereditary tendency to the disease. That being so, causes that would not have produced insanity in others, had a more immediate and powerful effect upon him.

I think that he committed the murder under an insane delusion, and by impulse. The same impulse was in some degree manifested in the prison, when he attacked the officer, and when he struck the convict who removed the shoes, at whom he threw a stick of wood. He seems to have thought that he had been wrongfully imprisoned, and that he was entitled to pay. The delusion about pay, it seems, gained an ascendancy over his mind, until it became the predominant feeling, and under an impulse he killed Van Nest and his family. He believed that he was entitled to pay from somebody—that it was due him. That was the delusion under which he labored, and did, when I saw him. His visiting his friends but seldom, when he came out of prison; his stupor, silly smile, and taciturnity, when he did; his getting

up nights, and his talking to himself, all corroborate the opinion that he was insane.

In regard to his getting his knives in open day light, and preparing them, I can only say that those facts go to show that he did not wish to conceal them. As to the evidence furnished by the dreadful act itself, I agree with Dr. Brigham entirely and fully. His going to a house where people lived, against whom he could have no purpose of revenge, or discoverable motive for killing them all, is to my mind strong evidence of insanity. Perhaps if he had only killed Van Nest, there would have been less evidence of derangement; but the murdering of a whole family, and among them a little child, is a fact that shows to me that he must have been insane. Indeed, his object seems to have been to kill, and that if he had met any body else he would have killed him or them. He didn't want plunder. He took nothing, nor did he try to take any thing from the house, or from the pockets of Van Nest. The circumstances attending his departure to Schroeppel, and his arrest by Amos, go in corroboration of the same opinion. His statements about the liver, and confessions generally, are evidence of unsoundness, because it is not probable at all that Van Nest said any such thing to him.

I think he has no just conception of the enormity of his crime, nor any just moral feeling on the subject; nor is his indifference to this trial the indifference of a sane mind. His personal appearance, deportment and smile are those of a person partially demented, and who is approaching dementia. He has some memory, but very little knowledge or understanding. He is not totally, but is partially demented, and is laboring under a delusion. I think he became insane in the State Prison, and was insane at the time of the homicide. He undoubtedly acted under an irresistible influence, or delusion, when he committed the offence, for which he ought not to be held responsible.

Cross Examination.—I was sworn on the preliminary trial of this prisoner. I don't know as I was less confident of his insanity then than I am now. I then formed that opinion, and I am yet confident that it was correct. I have discovered no change. The external evidences of his insanity are found in his general manners, the expression of his countenance, and the idiotic smile. I would look at his eyes also, as they make up the general expression of a crazy man. The movement of this man's eye is unnatural. It moves rapidly, and generally upward, but sometimes downward. There is not much intelligence expressed by his eye; it rather denotes insanity. The moving of his eye alone, would not be evidence of his insanity, unaccompanied by other circumstances; all must be taken together. His head does not denote intelligence or moral qualities. His head, in the region of the brain, is smaller than that of persons of his age who are healthy. His whole head is smaller than a healthy man of his age. It is smaller than Doctor Brigham's or the attorney general's. His body inclines forward and sometimes sidewise. His general attitude is unnatural; his arms are rather elevated.

I don't think his leaning forward is because he is trying to hear, because he does so when there is nothing to hear. His position is peculiar to demented patients. In the strict sense of the term I should not consider insanity contagious, yet at times it is epidemic. It sometimes appears epidemic on the coming on of warm weather. There is such a term used as cleptomania, and I think it may exist with him.

Before going to prison there might have been some aberration in him. Stealing hens might have been whilst laboring under a slight aberration, yet I should not think so. This prisoner's case is one that could not be described by any one term mentioned in the books. I have read of similar ones, but cannot find one exactly like it. I do not think as well of the classification of insanity by Hale and Blackstone, as I do of that of Dr. Brigham. The prisoner's delusion is an irresistible impulse. The difference between this delusion and obstinacy, is, that some part of the understanding is deranged in this, but not in obstinacy. This prisoner does not know what craziness is. He does not know that he is crazy. No logic would convince me that he is sane. I did not infer from Winner's testimony, that the prisoner had been drinking. If he had killed Van Nest only, I said I should not have thought him insane, yet I don't know that he had any other motive to kill the rest than he had him.

The capacity of our ordinary physicians to judge of insanity, depends upon their experience and their learning; the practice is to send the insane patients to the Asylum. If physicians have no opportunity to treat cases of insanity, their ability to judge is limited. I should think in a clear case of insanity like this, an ordinary physician could judge and discover it. A man not a physician would not be able to, perhaps. He might form an opinion, but it would not be as safe or satisfactory as the opinion of others.

Re-Examination.—A verdict of a jury in this case, that the prisoner was sufficiently sane to know right from wrong, I do not consider a verdict of sanity. It falls far short of it.

Dr. Charles B. Coventry, called and sworn, testified: I reside in the city of Utica, and am Professor in Geneva Medical College. I have seen the prisoner and have heard the testimony respecting him. I was sworn on the preliminary trial. My opinion then was, and still is, that the prisoner is insane, and has been for a considerable period of time. His whole appearance and manner indicate it. His acts as detailed by witnesses indicate it. The testimony in the case all taken together, convinces me beyond a doubt. As to the causes of his insanity, I find that the existence of it in his family was one probable cause, the neglect of all moral culture another, and his confinement in the State Prison another. Since his release from the State Prison it appears that he has been laboring under a delusion that he was entitled to pay. His open and undisguised preparation of the instruments, without any attempt at concealment, is not consistent with a rational mind. The act, being without any assignable motive, is

also inconsistent, for I cannot conceive it possible that a sane man should go forth and commit such a butchery without any reason whatever. If he were sane, he must have known that the probable result would be his arrest and punishment. His belief that he can read when he cannot, is another evidence of delusion. His indifference when on a trial for his life, is another reason for believing him insane.

I think the prisoner's case is one of partial mania with dementia. Dementia, as the term is used, exists where those faculties that once existed had become impaired. In perfect dementia there is a perfect loss of all the powers of the mind. Dementia may come suddenly, but generally comes gradually. It is a common termination of mania. If the mania is partial the dementia is partial, and depending upon which of the faculties that have been injured. At the time of the murder, I believe the prisoner's disease was more of a mania than dementia, and that he had perhaps more intelligence than now, yet I don't believe, in reference to the act he committed, that he knew the difference between right and wrong. I think from his appearance that he is insane now. I examined him in the jail, but can state but little that has not been stated by other witnesses. As to his flight from the place of homicide, I suppose it was not contemplated until he found himself disabled. From the facts in the case so far as I have heard them, I am not able to say that the delusion was upon him until he came out of prison, yet it might have existed before. I did not hear the testimony of Green. I cannot say I have doubt of his insanity then or at this time. [Last sentence ruled out.]

I never knew an insane person, unless he was totally deprived of intellect, who could not distinguish between right and wrong. Insanity may exist where the patient can distinguish between right and wrong. This is illustrated by a man who killed his child and the child of his wife, and said it was because God had commanded him. He could distinguish between right and wrong in other things. Where insanity is feigned, ordinarily, the answers are irrelevant and wandering, and oftentimes evasive. I have made insanity a subject of particular attention and study. At my second interview with the prisoner, I became fully satisfied that he was insane on the twelfth of March.

Q. Do you consider an ordinary man capable of judging of insanity?

A. I think he would not be able so well to judge, for the same reason that a man who had not studied law could not as well judge of legal questions as one who had.

Q. What is insanity?

A. It is very difficult to give a full definition of insanity in one word; it is a symptom of disease of the brain.

Q. Is a man who is not sane, insane?

A. Yes; but that would not be a good definition. It is true that every

insane man is not sane, yet insane men differ. Insanity is to be defined otherwise than by a categorical answer to a question.

Q. Do you agree with Doctor Brigham in relation to this case?

A. In general I do.

Q. Do you define dementia as he does?

A. Substantially.

Q. Do you think the prisoner has cleptomania?

A. I think he has almost a total abolition of moral faculties, yet his is not strictly a case of moral insanity, because his intellect is impaired, and his moral faculties entirely gone.

Q. Do you think you can form as good an opinion as to what took place before the justice in respect to the insanity of the prisoner, as he could?

A. I think I can.

Q. What do you say about his delusion?

A. That he was under a delusion that he was entitled to pay and could obtain it by murder.

Q. Are you aware that a large number of convicts have the same notion?

A. I never heard of it before this trial commenced, and now I do not believe that it is a general delusion that prisoners believe themselves entitled to pay, and that they can get it by murder.

Q. If it can be shown to be general, would it change your opinion respecting the delusion?

A. It would not make any difference in my opinion as to this case, and I would believe that insanity existed in other cases if they believed what this man did, precisely.

Q. How do you distinguish between a mistake and a delusion?

A. In some cases it would be difficult to draw the distinction, but where the person imagines impossible things, which he knew did not exist, it would be regarded as a delusion.

Q. If a man think he is entitled to pay, but cannot get it because he is not entitled to it, and seek redress, will that be evidence that he is insane?

A. If a man should think himself entitled to pay, and failing to get redress, should kill the first man he meets, it would be some evidence of insanity.

Q. Would killing in such a case be murder?

A. I think it would not.

Q. Suppose the law made it murder?

A. It would not be murder in fact.

Q. Does delusion always show a loss of memory?

A. No sir; if you should imagine yourself governor, it would not show any impairment of memory. As, for instance, the man who signed himself Jesus Christ, in France.

Q. Now can you imagine a case of insane delusion without a loss of memory?

A. Yes; and the case mentioned is an instance.

Q. Do you not believe that the prisoner thought he was doing wrong when he killed Van Nest?

A. He said he did not think any thing about it, and such is my belief.

Q. Did you say that the fact that there was no concealment of his knives indicated insanity?

A. I think I did so state.

Q. If he had shown secrecy would that have indicated sanity?

A. So far as it went it would indicate sanity rather than insanity.

Q. Now, how was the fact in this case, as you understand it?

A. That he openly fitted his knife into a club, in a public shop.

Q. Suppose he turned his back and concealed the fitting?

A. I cannot believe that any sane man would thus openly make his preparations for a homicide, yet insane men do sometimes conceal.

Q. Can you conceive that a person should commit murder from revenge?

A. I can.

Q. Is not revenge a sufficient motive?

A. It may induce the act, but it is a reason that would not be adequate to a man of sound moral sense.

Q. Why did he not, in your opinion, finish his work after he had begun?

A. My view of the matter is that he desisted because his arm was wounded. So far as he had any intention, that was it. There was no reason for his going to a particular house more than to any other.

Q. Was not his flight evidence of sanity rather than insanity?

A. I think it was no evidence that he was sane.

Q. Don't you find any evidence in this case to contradict the idea of insanity?

A. I do not.

Q. As to his apparent indifference, are you not aware that he is very deaf?

A. I am; but that does not account for his insensibility. I never saw a sane deaf man who wouldn't try to hear when he was on trial for his life.

Q. Have you not seen men who were indifferent about living?

A. I have seen people when dying who manifested no interest in reference to death. But in those cases the mind had already become impaired. I have never known a sound mind that did not manifest some sensibility as to the result.

Q. Doctor, have you prescribed for the insane?

A. I have.

Dr. Thomas Hun, called and sworn, testified: I am a physician, and reside at Albany. I was licensed sixteen years ago, and have practiced since, with the exception of six years, which I spent in Europe. I am now one of the Professors in the Albany Medical College. I have seen the prisoner. I saw him on Wednesday morning, the fifteenth instant, for the first time, in his cell. I also called there the next morning with Doctors McNaughton and

Brigham, but was, by the Sheriff, refused admittance. I have seen him since in court. Have not heard all the testimony.

Mr. Van Buren asked Mr. Seward what he proposed to prove by this witness.

MR. SEWARD observed that he proposed to prove by this witness, that in his opinion, the prisoner is, and was insane at the time of the commission of the crime.

MR. VAN BUREN said he objected to the proof, on the ground that the verdict on the preliminary issue, rendered on the sixth day of July, instant, was and is conclusive that the prisoner was sane on that day; and that the same cannot be contradicted by evidence. (Cites Cowan and Hill's Notes, part I., 762; 7 Wend., 78.)

MR. SEWARD stated that he proposed to prove by Dr. Hun, that from conversations with the prisoner since the fifteenth day of July, and from his personal appearance, and from what testimony he has heard, he believes the prisoner now insane, and that he was at the time of committing the act, for which he stands indicted.

The Court.—The witness may give his opinion as to the sanity or insanity of the prisoner, upon facts within his knowledge, before the sixth of July, instant, or from the personal appearance of the prisoner; but not from any conversations with him since the sixth of July, nor from the testimony in the cause.

Decision excepted to.

Witness continued: If I exclude what I have learned of the prisoner since the sixth day of July, I cannot give a positive opinion respecting him. From his appearance here in court, I would suspect him to be insane. I could not form any opinion as to whether he was sane or insane on the twelfth day of March. His appearance as he sits here in court, and the idiotic expression of his countenance, indicate insanity. Insanity is a chronic disease of the brain. It is a derangement of the mental faculties, depending on a physical disease of the brain. If on the twelfth day of March he appeared as he does now, I would suspect him of being insane then. Insanity generally comes on slowly, but in some cases suddenly. The prisoner's insanity may have come on since, but it is more probable that he may have been insane then.

Q. Did you make a personal examination of the prisoner at the bar since your arrival here, with reference to the state of his mind?

Objected to, objection sustained, and exception.

Q. Is it your opinion, founded on your personal examination of the prisoner since the sixth day of July, instant, that he was insane on the twelfth day of March last?

Objected to; objection sustained, and exception.

Q. Is it your opinion, founded upon your personal examination of the prisoner since the sixth day of July, instant, that he is now insane?

Objected to, and objection sustained.

MR. SEWARD then submitted the following objections to the decisions of the court:

1. That the verdict on the preliminary issue has not yet been given in evidence on the trial of this issue.

2. That if given in evidence, it is not conclusive in this cause, on the present issue.

3. That it is not a verdict on this issue.

4. That there has been no record filed, or judgment rendered or entered on that verdict.

5. That the verdict rendered on the preliminary issue is no more conclusive than a verdict on the present indictment would be on a subsequent trial of an indictment for the murder of any other person by the prisoner at the same time.

6. That at most, the verdict is only a judgment *in pais;* that it may be contradicted and explained.

7. That at most, it should only go to the jury as evidence with the other facts in the case; and that the jury have a right to find a different verdict, and are bound by the verdict on the preliminary issue only so far as they may think they ought to be, when taken in connection with the other evidence in the cause.

The court re-affirmed its decision. Excepted to.

Q. Suppose a young man to have been brought up in this community until he arrived at the age of twenty-three years, and who had learned his letters in the Sunday school, should you believe he would think he could read when he could not?

Objected to, and objection overruled.

A. I should think him insane.

Q. If when he tried it were found that he could not, and he should be told that he could not, yet persisted in saying that he could, what then?

A. It would be additional evidence of the same character.

Q. Suppose him unable to count above twenty-eight, and yet going through a process of numbers, thinking he could count?

A. That also would lead me to think he was insane.

Q. Suppose he were unable to multiply two by three, but should answer that the product was sixty-four?

A. The same.

Q. Suppose the prisoner to have been sent to prison at the age of sixteen—to have served his time—to have gone to a justice of the peace for a process to get his pay of them who sent him there—on being told there was no remedy, to have procured, prepared, sharpened knives in open day; to have made indiscriminate slaughter of those against whom he had no cause of complaint, for the sake of his getting his pay?

A. If I believed he did it for that reason, I should conclude he was insane. It would be an insane act.

Q. Believing that he did it for that reason, and under those circumstances, should you think he knew the right from the wrong of that act?

A. If he did it for that reason, I should not.

Q. Suppose he entertained that belief, and acted on that ground, would there in his case be an insane delusion?

A. Certainly. If a prisoner came out of State Prison who was innocent of the offence for which he had been imprisoned, and should think himself entitled to pay, and after being told that he was not, he should persist in that belief, and act upon it, it would be an insane delusion.

Q. Suppose that he, for that reason, should slay one man, two women and one child who had no connection whatever with his imprisonment?

A. That would be strong evidence of the existence of an insane delusion.

Q. If when conversed with about the transaction, he should say that he would have gone on and killed others, if he had not killed this family, and only desisted because wounded?

A. It would be the expression of an insane man.

Q. If, when asked why he escaped, he should say he wanted to get out of the county, and when his hand got well to return and do more work?

A. A part of that would be a sane answer; but that part relating to his coming back and continuing his work, would show an insane mind.

Q. Suppose a person to have been in childhood, smart, playful and active, and to have had good learning; to have been sent to prison five years and to have come out dull, stupid and idiotic; to say nothing except when spoken to, and then only generally; what would that indicate?

A. It would indicate great imbecility of mind, but I don't know that it would denote insanity.

Q. Would it lead you to suspect that he was insane?

A. It might be simple stupidity, in consequence of his treatment in prison.

Q. Suppose he should say that he had seen Jesus Christ at the Sunday school?

A. If he spoke sincerely, I should think it indicated insanity.

Q. Suppose such a person, after having killed four persons, should say sincerely that he thought it was right?

A. That would indicate insanity.

Q. Suppose a prisoner on trial for the crime of killing four persons, should, when asked what they were trying him for, sincerely answer, "a horse," for which he had been sent to prison five years?

A. The answer would indicate insanity.

Q. Suppose a prisoner after being in prison five years for stealing a horse, should sincerely say, on coming out, that he had broken the knife that he used in eating, and he should sincerely ask whether they could send him to prison four years more for that, what would that indicate?

A. It would indicate either insanity or great imbecility.

Q. Suppose a prisoner charged with four murders, to be eight days in

court where he was defended during that time by three counsel on a plea of insanity, and at the conclusion of his trial, on being asked if he had any counsel, should say that he didn't know?

A. No sane man would be likely to make such an answer.

Q. Suppose a person on trial for his life should answer the physician who visited him in jail, all the questions put to him involving the whole history of the murder and tending to his own conviction, "yes," and "no," what would that indicate?

A. I think a sane man who was feigning insanity might admit the crime, but whether a very ignorant man would, or not, it is impossible to tell.

Q. Suppose he were so unlearned as not to be able to count beyond twenty-eight—nor to know whether he could read?

A. I must answer as before.

Q. Suppose he were severely wounded on his wrist, and chained with a heavy chain, without making any complaint?

A. An insane person makes less complaint of pain than a sane one, but a sane person might have submitted to that without complaint.

Q. How far may persons retain memory in a case of partial dementia?

A. They may retain it enough to remember the principal events of their lives.

Cross Examination.—Q. What are the symptoms which you discover in this man, denoting insanity?

A. His listless manner, his inattention to what is going on around him, and the idiotic smile upon his face.

Q. How is the general expression of his face?

A. It is idiotic.

Q. How is his eye?

A. It has an idiotic expression.

Q. Describe that idiotic expression?

A. I cannot describe it more than I can the eye of a person that is angry, and yet every person can see symptoms of anger in the eye.

Q. Then you consider that the prisoner's eye indicates idiocy?

A. I do not discover it in the eye, more than in any other feature. His eye, however, is dull.

Q. Do you think his eye is dim?

A. I do not use that word. It lacks lustre.

Q. Any thing else?

A. Nothing that I can describe.

Q. What are the symptoms of dementia?

A. When dementia is complete, there is a total abolition of the mental and moral faculties.

Q. In complete dementia, is memory entirely gone?

A. Almost entire forgetfulness would denote dementia.

Q. When the disease is so far advanced that you call it dementia, is forgetfulness of recent events, one symptom?

A. It is a very common symptom in all its stages.

Q. Do you remember a case where there was not some forgetfulness?

A. I have never observed these cases with sufficient care to answer advisedly.

Q. Did you ever see a case of dementia where you did not discover a lack of attention?

A. I recollect of none.

Q. Is dementia most common to old or young people?

A. It is most common to old, but many occur in the young.

Q. Where it is perfect do you have to feed the patient?

A. In some extreme cases there would be loss of appetite.

Q. If this man eats well and regularly, would you not infer that he had not that symptom?

A. Certainly. I speak of that as one of the symptoms that indicate the last stages of dementia, and probably occurs in but few cases.

Q. Did you ever know a case of delusion where the patient had not lost the power of comparison?

A. If he fancies a man to be a horse, and understands that a horse is larger than a mouse, he would then have comparison.

Q. But would he compare that horse with a man, or that man with any other man, so as to see that a man wasn't a horse?

A. He might know that a horse was less dangerous than a lion, and might not think every other man a horse.

Q. Is the idea that a man is entitled to pay after being in prison, an insane delusion?

A. Any man might have that supposition arising from ignorance. It might, however, be such an idea as to amount to a delusion?

Q. But suppose every one should tell him that he was wrong, and yet he should not be convinced, but should say he would have revenge, would that be an insane delusion?

A. I do not think there is any insane delusion in revenge upon those who had injured him.

Q. If a man will shoot into a crowd, would you say that indicated insanity?

A. I think that no sane man would shoot into a crowd. If he did, I should say that he had a motive.

Q. If it appears in this case that the prisoner was in want of work, and went to Van Nest's and asked for work, which was refused, and then passed two men whom he might have killed, to kill the Van Nest family; do you not think the killing might be from sanity and revenge?

A. If I were satisfied that he committed the act upon so slight a cause,

I should say he was insane, for no sane man would commit a murder so atrocious for that reason only.

Q. Have not men called others to the field and killed them in duels for a slighter motive?

A. I do not think any duellist would have killed his man, had the latter been unarmed; but that is a very different act from the one for which the prisoner is on trial.

Q. If it be shown that Van Nest's house was in a retired place—that he was a wealthy man and had money to lend, might not his object have been plunder?

A. I have often heard of rich men being murdered. From the facts comprehended in the question, I could draw no inference one way or the other.

Q. If he ran away, would you not infer that he thought he had been doing wrong?

A. As a general proposition, I should say that when a man commits a crime and runs away, the inference would be that he knew he had been doing wrong.

Q. If he denied the stealing the horse which he had stolen for flight, but claimed to own him, would that add to your suspicion?

A. It would.

Q. If he knew he had been doing wrong, would you consider him sane as to that act?

A. So far as that goes it would indicate sanity, but he might in other ways, at the same time, manifest insanity.

Q. Are design and concealment evidences of sanity, as far as they go?

A. Such indications are common, both to the sane and the insane; yet they are most common to sane people, as all sane people plan their movements more than the insane.

Dr. James McNaughton, called and sworn, testified: I am a physician, and reside in the city of Albany. I am Professor of the Theory and Practice of Medicine in the Albany Medical College, and Surgeon General of the State of New York. I have practiced physic since 1817. I was educated at Edinburgh.

Q. Have you examined the prisoner in reference to the state of his mind?

Objected to, unless the examination was before the sixth of July, instant. Objection sustained, and exception.

Q. What is your opinion as to the sanity or insanity of the prisoner?

A. The Attorney General objected to the question, and insisted that the examination should be restricted to a time antecedent to the sixth day of July, instant; and that the witness should not take into consideration any thing he may have learned by or from the personal examination of the prisoner, made by him, since that day.

Objection sustained, and decision excepted to.

Witness says: I cannot, of course, form a very positive opinion of the mental condition of the prisoner, from seeing him here in court. He appears to be stupid and foolish. I take him to be a person of very feeble intellect. His smile is idiotic—either natural or acquired. He may have always been as he is now; yet if it appear that he had more intelligence formerly, I should conclude that it was not natural idiocy. If I knew nothing of him, I should from his appearance, alone, say that he was an imbecile. He is either idiotic or partially demented. I could not say that he is not feigning, but I don't think he feigns. If he looked as he does now on the twelfth of March, I should have given the same opinion of him then that I do now.

Cross Examination.—Q. Do you know that colored people are more deficient in numbers than whites?

A. I know that, as a general rule, they are not as well educated.

Q. Do you consider insanity contagious?

A. Not as we use the term in medicine.

Q. Is it epidemic?

A. It has been known to prevail extensively at some seasons.

Q. What qualities would you expect this prisoner to manifest, docility and mildness, or violence?

A. The habitual expression of his countenance is rather pleasant; if let alone and not provoked, I think he is rather harmless.

Q. Should you think him active or dull?

A. His appearance would indicate dullness, at present.

Q. If his appearance is the result of disease, and he looked on the twelfth of March as he does now, would you expect him to act then as he does now?

A. It would depend on the disease. If the disease affected his brain and lessened its action, then I should expect decreased activity.

Q. Have you paid particular attention to surgery?

A. I have, sir.

Q. Did you amputate the leg of an eminent lawyer in Albany, near the thigh, and did he manifest any pain?

A. He did not make much complaint—no more than to show it a little in his countenance.

Q. Does inability to narrate indicate a want of coherence?

A. If a person from inability could not narrate, it would indicate a want of memory.

Q. Is the difficulty in finding the motive of actions any indication of insanity?

A. I do not suppose there is any insanity in the difficulty. If there were no rational motive for an act, the act would of course be irrational.

Q. Are preparing, concealing, and grinding knives in the night, an indication of design?

A. So far as the circumstances may be considered by themselves, they may be evidence of design.

Q. Is subsequent flight and denial of property stolen, and lying as to the ownership, evidence of sanity?

A. Taken by itself I should so consider it.

Q. Which would be the safest way to discover the insany of this man, to take his acts and declarations before the murder, or his declarations after he was arrested and in jail, after a plea of insanity had been put in?

A. His actions previously, I should suppose, would have the most influence; yet his actions ought all to be taken together.

Q. So far as any change in the man is concerned, who would be the best judges, those who had the management of him in prison, or those who are called in to see him now?

Objection. Objection overruled and exception.

A. That would depend upon what attention was paid to his appearance.

Q. Suppose the persons seeing him in jail had not seen him for several years before?

A. They would be likely to notice the change sooner than those who saw him every day.

Q. If it should be proved that the prisoner was ignorant, depraved and criminal before going to prison, would you think that his homicide did not result from depravity?

A. Depravity may have induced him to commit the crime. I don't conceive that the crime itself, unaccompanied with any other circumstance, is any evidence of insanity.

Q. If it should appear that he went to the retired house of a wealthy family, and murdered them, and ceased only when his hand was cut, would that indicate insanity?

A. I must answer as before.

Q. If this prisoner had the same general expression of countenance when he was admitted to be sane, that he has now, would it not be fair to infer that he is now sane?

A. No, sir.

Q. Does he not now look as if he were sane?

A. If I were to judge from his looks alone, I should say that he never was particularly sane. Nature has written that pretty clearly on his countenance.

The prisoner's counsel here announced that the testimony for the defence had closed, but desired that the jury might have an opportunity of making a personal examination of the prisoner.

Objected, and objection sustained.

The prisoner's counsel then rested the defence.

NATHANIEL LYNCH was then called and sworn on behalf of the people. He testified as follows: I know the prisoner. He lived with me some sixteen years ago, and also a few days last winter. When he was young he was a lively, playful boy. We couldn't keep him; he would run away every

day. His mother brought him to our house. I didn't know much of her. She was a drinking woman, and we concluded we couldn't keep the boy. She is part Indian, as is said. I don't remember in particular how he carried his head; I know he was almost always smiling, and laughing, and appeared to be a lively, laughing, playful boy. I have noticed, during this trial, the peculiar turning up of his eye. I do not remember that particularly when he was young. After a little time he grew out of my knowledge, and I didn't know about him until last winter. I then found him on the side walk, in Auburn, and employed him to go with me about three miles after some cattle. I went up to him, found him deaf, asked if he was engaged, and if he would go and help me drive the cattle. He said, "I can." He got a colored boy to take care of his saw-buck. We rode some distance before I said any thing to him. He'd grown out of my knowledge, and I'd forgotten him. Said I, "You havn't lived long in Auburn, have you." He said he'd always lived here. I asked his name, and he said it was Freeman. I asked if he was brother to Luke. He said Luke was his uncle. He then said, "I've lived with you." I took him with me to see me pay over the money for the cattle. We then drove them home; he drove them and I rode in the cutter. When he got back I handed him three shillings, and asked him if he was satisfied, and he said he was. The next day he sawed wood for me. At night he asked me if I wanted him the next day. The next day he got there before daylight. He said he thought it was about day when he started. I offered to pay him fifty cents a day, and handed him the money. He asked five shillings per day, and said he could get it elsewhere. I told him I only gave four shillings a day. He appeared to be quite put out. He contended for five, but took the four shillings a day, and went away. After that I saw him several times in the village. Once he asked for work, but I had none for him. In January, he came up and asked if my cattle hadn't got away, and said he saw some in Clarksville that looked like mine. I told him mine were at home, and he turned and went away. I saw him three weeks before the murder. I next saw him in jail after the murder, but before this court. I then asked him if he knew me. He said, "Mr. Lynch." I asked about the time he lived with me. He said, "I was quite a small boy." I asked if he got whipped. He said, "I did some," and described a whipping Mrs. Lynch gave him—how he ran away, and how he got on to the fence—then ran away until his mother brought him back. He then said that he asked Mrs. Lynch for his clothes, and that she said she would give him a whipping in lieu of his clothes. I asked him him whether I ever whipped him. He said, "You did once or twice, a little." I recollect of whipping him. I asked him where he went to from my house. He said he went to Captain Warden's. I asked where he went to from there. He said he went to live with a colored family in New Guinea. He said one day a man overtook him and asked if he wouldn't live with him. He said he told him he would, and went. He said he next hired out to Mr. Curtis.

I then conversed with him about the murder of Van Nest. I asked him at what time he went up there. He said, "Just at dark—edge of evening." I asked if he went right to the house. He said, "I went by the house." I asked if he met any person. He said he did. I asked where he was. He said, "By side of the road." I asked why he didn't go right in. I think his reply was, "It was a little too early." Then I asked who he killed first. He said, "The man." Didn't you kill the woman first. He said No. I asked where the woman was. He said he saw her coming, through the window. I asked if he did not come up behind her. He said he met her and stabbed her. Then he came in and stabbed the child. I asked who next. He said he met a man at the head of the stairs, and stabbed him here, (putting his hand to left breast.) I asked what the man did. He said the man catched the candlestick and hit him on the right side, and that he slipped, when the man hit him again, so that he slipped down the stairs. He said, "I thought I'd stab him again." I asked why he didn't. He said, "The man got the broom and kept striking me, and I thought I'd go out." I asked when he struck the old lady. He said at the gate. I think he said he broke his knife in the hall. I asked with what knife he stabbed the old lady. He said, "In cane." I asked where he carried his knife. He said, "In here," pointing to his breast under his coat. He said the old lady cut his wrist bad. I asked how he came to kill the child. He said, "Was afraid it would make a noise." I asked how he felt about killing the family. He replied, "It looked hard." I asked what made him get such a poor horse. He said, "I was in a hurry, and didn't mind much about the horse." I asked why he didn't come to my house and see me. He said that he had got his wrist cut and knife broke, and he thought he'd go off till his wrist got well, and then come back and do some more work. I said to him, "We are good friends, aint we Bill?" He said Yes. In all these interviews I didn't think of such a thing as insanity. He helped me kill hogs, and helped me carry meat, and did errands. Aside from his deafness, I never discovered any want of apprehension in him. He moved so quick that I thought of hiring him. When I saw him in jail I discovered no change in him. He is in the habit of smiling, and was last winter. He then stooped as he does now. When I asked him why he killed that innocent family, he said, "I've been in State Prison five years, and they wouldn't pay me."

Cross Examination.—I never communicated these facts to any person. I was not requested to go into the jail by the counsel for the people. At the time he told me about the cattle, he said he lived in Clarksville. When the prisoner lived with me I was a member of the First Presbyterian church. I don't remember of taking him to church. He received instruction in the house about what I wanted of him. Cannot say whether I gave him any religious or moral instruction. I used to talk with him. Finding his mother intemperate, I concluded not to keep them. I talked to her about the Savior, but could not now tell the particulars. I am not a member of that church

now. I am not under obligation to tell how I ceased to be a member of it. I was charged with having had unlawful intercourse with one Catharine Ramsay. That offence was never proved against me in a legal way.

ALVAH FULLER, called and sworn, testified: I was sheriff's assistant when prisoner was brought to the jail. I went for Dr. Fosgate to dress his wounded wrist; he said it hurt him. I asked if it pained him. He said it did some. When the Doctor came he asked the same question, but got no reply. I saw him in court during the trial of Henry Wyatt. While in jail I asked him if he had enough to eat. He said Yes. He asked me for tobacco, and I gave it to him. He told that Dr. Fosgate said he ought to have a leather on his shackles—that the doctors said they might create inflammation, and his leg would have to be taken off, and it would kill him. I said to him, "Bill, you ain't afraid to die?" He said, "No; but I want to live a little longer." He eat well. I never discovered any evidence of insanity about him. I spoke to him in the court house during the Wyatt trial.

CROSS EXAMINATION.—He was on the second bench from the end when I spoke to him. I carried his victuals to him in the jail. I know nothing about his sleeping. I asked if he could read. He said Yes. A testament was left for him in the hall.

AARON DEMUN, called and sworn, testified: I am uncle to the prisoner by marriage. The prisoner is twenty-one or twenty-two years old. He has made it his home with me a good deal before he went to the prison. He'd run away, and then come back. He was a rather wild boy—wouldn't remain long in a place. I did not see him in prison, but saw him when he came out. He came along to me and said, "Uncle Aaron, how d'ye do?" I asked how he did. He said, "Pretty hearty." He didn't seem deaf. The next time, I saw him down at DePuy's. He there sat still, and didn't say any thing. That was in the winter. I saw him in the street after that. I once asked him where he boarded. He said at Mary Ann Newark's—but that he didn't exactly board. "I bring my provisions, and she cooks for me." I asked if he slept with her. He said, "No; she's a christian, and don't do no such thing." He told me he was then going of an errand. He was carrying a basket for her.

The same day he committed the murder, he asked for tallow to grease his boots. I said he could take some tallow to grease his boots. He told me he was going to hire out by the month with some farmer. I told him that was the best way for him to do. He said to me, "Uncle Aaron, you've a good place here. Are you to work here steady?" I said Yes. I told him that if he didn't get more than seven or eight dollars a month, to take it. He talked as rational with me the day of the murder, as he ever did. HE ALWAYS HAD THAT SMILE, AND THAT DOWN LOOK. I knew his grandfather. He had that same smile. I see no change in William, only that he has grown larger and older, and is deaf.

CROSS EXAMINATION.—His father had the same smile on his countenance.

His mother did not. His father has been dead ten or twelve years or more. His grandfather died two or three months ago. The prisoner used to like to play just like the rest of them. He was wilder than the rest of them. He lived with me when he was eight or nine years old, and I had no dependence on him; he would run away. When I spoke to him, he was across the street. I have no doubt he heard me. That was the day he came out of prison. I have been sworn before. People have talked to me, but it never changed my mind. William was too lively for me when I had him. He didn't need any whipping, except for running away. After the greasing of his boots, I didn't see him until I saw him here in court.

DAVID MILLS, called and sworn, testified: I knew the prisoner when he was in the State Prison. His conduct was very good whilst I knew him. I didn't know of his being punished. He was very faithful at his work. I didn't discover any thing about him indicating insanity. I have noticed his appearance in court here. That was always the same. There was always a smile on his countenance. Would smile when there was no occasion for it. I knew his grandfather, and thought a good deal of him. I think his smile resembled the prisoner's. I don't think he had as much of a down look as William has. Since he came out of the prison, I met him one day, and he went home with me to move a pile of manure. He did it, and banked up my cellar. I requested him to saw some wood. He took the saw, and said it was dull. I gave him a shilling, and told him to get it filed. He did so. I asked him afterwards if it went any better. He said Yes. When he got through I asked him how much I should pay him. He said he didn't know—whatever I thought best. He said he wanted a pair of fine shoes. I told him I would go down to the shoe store with him. I went with him to my son's store, who handed down some shoes, but he didn't like them, but pointed to others, which he tried on and they suited him. I paid for them, and told William that he would be in my debt, and must come and wash off my buggy, and he did it. He looked a little pale, but I never saw any thing in him that induced me to think he was not sane.

CROSS EXAMINATION.—I had nothing to do with punishing prisoners. I talked with him in the prison. He complained of ear ache, and I once sent him to the hospital, and he got something to help it. His deafness varied.

DR. JEDEDIAH DARROW, called and sworn, testified: I am a physician and surgeon. I have examined the prisoner in the jail. I concluded that his memory was good. I talked with him considerably. I discovered nothing that indicated that there was insanity about him. My opinion was that he was sane at the time I saw him.

CROSS EXAMINATION.—I have not read any thing upon the subject of insanity for a great many years. My opportunities for observing insanity have been very limited. I had a patient under my charge once who was insane, and who was sent to Utica. I could not say what form of insanity the patient had. I do not give a professional, but only a common sense

opinion of this prisoner. I supposed there was a question about his sanity, and so I went in. I asked him nothing about the tragedy. The questions I put to him he answered well.

ISRAEL G. WOOD, called and sworn, testified: I know the prisoner and knew his father and grandfather. He worked for me before he went to prison. He was a good boy to work, and would do about as I told him to do. I have a distinct recollection of his appearance then; and I cannot see any difference in him now. He never held up his head, but looked from under his brows. He stooped, and never was much of a talker. I never knew of his asking any questions. As to his smile, he would always smile when he was asked questions. His grandfather was always smiling, but he held up his head. The old man would smile like him. I was jailer when the prisoner was arrested for stealing the horse. He broke jail and got out, and let another prisoner out. He made his escape; the other prisoner did not. He broke the lock with the handle to a shovel. I took him at Lyons and brought him back. When he was arrested he gave an account of the whole matter, and which way he went. Since his arrest for the murder, he has told me the same story. I talked with him a good deal. I never thought he was crazy. I never have discovered any craziness. It is my opinion that he is not crazy. I have no doubt on the subject.

CROSS EXAMINATION.—His grandfather would generally smile when he was spoken to. I never heard his smile spoken of. The prisoner could count money when he lived with me. He worked on the streets some and sawed wood. I said nothing to him about the murder when he was in the jail. I don't know much about insanity. When the prisoner was in jail for stealing the horse, he used to say he was not guilty, but he was afraid Jack Furman would swear him into the State Prison. I never myself discovered a man to be crazy, without being told of it.

BENJAMIN VAN KEUREN, called and sworn, testified: I was foreman in the prison hame shop in 1840, and the prisoner was then there. He worked at filing for plating. He was a middling kind of a workman, not the best nor the poorest. Sometimes he was pretty good, sometimes contrary and stubborn. There was nothing very peculiar about his conduct as I saw. Sometimes he was saucy, and once I reported him for that. Once, when he had not done as much as he should have done, but was playing "old soldier," by handing me the same work every day, I told him I should report him. He got surly. Next morning I asked him how he got along, and he wanted a new file. He said to me, "You must be a fool to s'pose a man can do as much with a dull file as with a sharp one." I told him I should report him. He said, "Report and be damn'd." I then reported him to Captain Tyler, the keeper. He took him to the wing and punished him, by showering. After that he would look up and grate his teeth at me as I passed; I did not, although I ought to have reported him for that. On the twelfth of June of that year he was turned away from

that shop and went to the silk shop, and then to the dye house. Tyler once punished him with a whip. They had a rencontre, and Tyler struck him with a piece of a board. The shop was a noisy one in consequence of the forges and machinery. I don't think Tyler hurt the prisoner. I can't see any difference in him between there and here. His position then was about the same as now. I see no difference. I never thought he was crazy. I don't think he is now. I have seen him since he came out of prison. He smiled in prison. His smile is familiar to me. I always thought he saw something that pleased him, which I couldn't see. I have no idea he was crazy.

Cross Examination.—He laughs now just as he used to in the prison. I don't see any malice in him now. I saw him after he came out once, and asked him how he did. I didn't notice whether he smiled or not. I think now that he looks intelligent, but I think he looks ashamed. That expression which you call a smile, I call a scowl. I was up at Van Nest's house, and while there, I said he ought to be Lynched. I changed my opinion soon afterwards. I don't know that his deafness increased. On the former trial I said I did think it increased. The blow on the head was a middling kind of a hard rap. I think it did not hurt the negro. I never had such a blow on my head, but I think I could stand it. I don't think a board three fourths of an inch thick that should be broke over my head would hurt me. I think Tyler struck as hard as he could, but I don't think such a board ever broke any body's skull. I have seen a nigger here in town break a two inch plank, by butting his head against it.

Daniel Andrus, called and sworn, testified: I knew this prisoner before he went to the State Prison. He worked for Cadwell a part of two seasons. I never noticed any thing very peculiar about him. My recollection is, that he was a boy of small mind, and rather bad temper. He drove team once to plough my garden. He also drew some wood for me. Cadwell had charge of a stone quarry, and had considerable teaming to do. After his time was out in the prison, he came to my office. I had acted as his counsel on his trial. He came in and I spoke to him, and told him to sit down. I soon after asked if he wanted any thing. He turned his ear towards me, when I perceived indications of deafness. He replied, "No, I came to see you." I then conversed with him about his going to the State Prison, and he answered my questions as readily, so far as I noticed, as he did before he went to the prison. I enquired how he had fared in the prison, and in reply he complained of the keepers. He said they got a pique against him and punished him when he did not deserve it. After he got through with telling me about his imprisonment, he asked me if I had any wood to saw. I told him I had not. He went away, and I have not talked with him since, until after he was arrested. During the Wyatt trial I saw him here in the court house. He seemed to be paying attention to the trial as others were. Robert Freeman was also here in court. I saw

the prisoner once in the jail, and went around and spoke to him through the grates. I asked how he was. He said, "Pretty well." I asked how his fare was. He said, "Pretty good." I asked if he knew me. He said he did. I asked what my name was. He said, "Esquire Andrus." He looked at me smilingly, and asked me if I would give him some tobacco. I gave him some and asked him if it was good. He said, "Good enough." He is some deaf, yet I have no doubt but that he can hear me when I speak now. I was sitting near him during this trial one day, and when about a foot from him, I whispered, "Bill do you want some tobacco," and he turned his head toward me and nodded assent. I gave him some. He carries his head more on one side, I think, than he used to; for then he was pretty erect. I don't recollect about his smile. He used to talk a good deal, and at times was full of nonsense. I can see no difference in him, only in his growth and deafness. I think the expression of his eye now is as it used to be.

Cross Examination.—I talked with him at my office the same as I would talk with other men. I did not talk upon politics or religion. I don't know whether he could read or write. When he drove the team to plough my garden I held the plough. I presume he would not have done as he did if I had not instructed him. I directed him how to plough. I recollect that Jack Furman was not sent to the State Prison when the prisoner was. I think Jack was arrested, but turned State's evidence, and convicted the prisoner. I may have seen the prisoner in the State Prison, but I did not recognize him if I did. I did not recognize him at first when he came to my office. He did make complaint against two of his keepers. He said they got a pique at him and punished him a great many times when he wasn't guilty. I think he said it was for pretended violations of the rules of the prison. I cannot tell what portion of my testimony he has heard. I cannot designate any word. I have not the least agency in the prosecution of the prisoner. I was one of the triors appointed by the court, and was a witness on the preliminary trial. The district attorney called upon me soon after this crime was committed, and I told him what I knew of the prisoner. I don't know as I told him the prisoner was not insane, yet I presume I have expressed that opinion to others. I went to the jail, not to see the prisoner, but to see a Mr. Wheaton, who was confined there. I don't know whether the prisoner knew that I was a lawyer before I went to the State prison, but I suppose he did. I said on my former examination, that I thought the prisoner was not insane. I do not suppose Freeman could hear any part of Wyatt's trial from where he stood. He might have heard some things that occurred, but I do not think he could have kept the run of what was said and done.

Walter G. Simpson, called and sworn, testified: I have known the prisoner ever since he was a small boy. I think I recollect his appearance. It was downcast, and he carried his head forward. When looking at you he would look up with his eyes instead of turning his head. I have noticed his appearance here in court. I think his appearance is very much the same

as when he lived at Cadwell's. He always had very much the same appearance that he has now. I recollect the smile, and I think it is now very much as it was before. His father had a higher forehead than the prisoner, and a darker complexion, but otherwise he looked a good deal as the prisoner does. His father was a smiling man and stooped some, and his grandfather had the same stoop and smile. I saw him in the jail and conversed with him. He said he stabbed the man first, and the woman next, and the old lady out at the gate. There were a good many there a talking with him. I heard a good deal of talk with him, and talked considerable with him myself. From what I know of him and what I have seen, I think he is sane. I have not seen any thing to make me think him insane.

Cross Examination.—Harry Freeman was not stupid. He was a pleasant man, and always smiled when he saw me. He was quite talkative. He was always a favorite among white people. I saw the prisoner the evening it was said he took the horse. His aunt was an intemperate woman. She was said to be crazy, but I don't know whether she was or not, from my own knowledge. She used to come to my house frequently.

Lewis Markham, called and sworn, testified: I have known the prisoner twenty years. His folks lived here with Col. Hardenburgh. He was a smart boy; was pretty active and quick. When sent on errands he generally went pretty smart. He was rather retiring, and hardly ever commenced conversation unless spoken to, and then answered pretty quick, Yes or No. His personal appearance was very much as now, only he has grown older, and large. I have a very distinct recollection of the smile, which was the same as I see now. His stooping and turning up his eye were the same then as now. I understood he was growing deaf, but I did not notice it then. I was here when he was tried, and think I was one of the jurors. I remember that his appearance then was very much as it is now. I cannot perceive any difference. I recollect well how he looked as he sat in the criminal's box. I saw him in the State Prison every day for a year, as I was relief keeper. I did not notice any alteration while he was in the prison. Have seen him frequently since he came out. I have nodded to him as I passed, and he would return the civility. Saw him at his meals, in his cell, and in the chapel. I was on night duty, but never heard any complaint about his not sleeping. His health appeared to be good. Over a year, I think, his father drove a team for us. He was always smiling and cheerful, and very similar to the prisoner. He most usually smiled before he answered.

Cross Examination.—Harry Freeman was a very talkative man. When he was sober he was a very sensible man. When he met me he always smiled the smile of recognition. His hearing I believe was good. I don't know any thing about this boy's education. He was a sprightly, lively, playful boy. He generally answered questions. I never remarked any lack of conversational powers. I never discovered any defect in his mind. At

the time he lived with Cadwell he didn't mingle with other boys, but was busy driving team and about the Seminary. Before that he was playing around with the other boys. If his mind be imbecile I have no knowledge of that fact. I always thought him a pretty shrewd boy, and that was my opinion of him whilst he was in the State Prison. I know nothing of his mind since he came out of prison. I never spoke to him in the prison. I observed nothing but what he was attentive and faithful. I was one of the petit jurors before whom he was tried. I don't remember that he had any counsel, or if he had, who it was. The trial didn't last more than one day. I don't recollect how long his trial lasted. It does appear to me that some one spoke in his behalf, but I won't be certain that he had any counsel. I believe I have not spoken to him since he was in the box on trial. I think he heard then. I don't recollect of noticing then or since whether he was deaf. I always supposed his mind to be as it formerly was. I didn't notice any change.

Stephen S. Austin, called and sworn, testified: I have known the prisoner six years. I saw him in jail when he was there under arrest for stealing the horse. I was there as assistant awhile. He was then a troublesome, quarrelsome fellow. His personal appearance and manner was very much as now. He carried his head forward, and moved his eyes instead of his head. I think he was blacker then than he is now. He is heavier now than he was then. I recollect that he fought with a boy in the jail, and flailed him. I never had any conversation with him except to ask him something. His answers were, Yes and No. I don't know that he was deaf. Since he came out I have seen him about the streets, and spoke to him once. He asked if I had any wood to saw. I told him I hadn't. He asked if I would have before long. I told him that Mr. Kelly sawed my wood. I have had no other conversation with him. I never discovered any insanity in him nor did I ever suspect any. It is my opinion that he is not insane. I have seen insane persons, and have taken care of them. After the story got around that the prisoner was crazy, I asked John De Puy one day if he thought him crazy. He said, "No; he is no more crazy than you or I, except when he is drunk. Then he's an ugly little devil, and I was always afraid of him." He then told about his having a knife at a ball, and that he, John, blamed the negro for not telling him of it. He said the prisoner had threatened to kill him, and he blamed Hersey for not telling him of it.

Cross Examination.—I now keep a livery stable in Auburn, and have been a constable of the village. When the prisoner was in jail, I considered him a mischievous, cunning kind of a darkey. This conversation with John DePuy was near my stable. It was after I had heard that he was crazy, and long before this court. He may be crazy for what I know. It is a mere matter of opinion that he is not. I know that Daniel Smith came out of the State Prison crazy. I did make some remarks after the Van Nest family were killed by the prisoner. I recollect of saying that he was not worth the

powder and shot it would take to shoot him. They were talking about hanging him, and stoning him to death, when I said the poor devil wasn't worth the powder and shot to shoot him. I saw stones and missiles thrown at him. When I got up to the house, I found but very few who were not for killing him on the spot. I made the remark in the presence of people who were talking of Lynching him. I assisted on that occasion. I didn't think it right to shoot him.

ABRAM A. VANDERHEYDEN, called and sworn, testified: I went after the prisoner at the time of the murder, and assisted in bringing him back. I have had process for him several times for petit larceny. The first warrant I had for him was for breaking open a pedler's cart. I also arrested him once on a charge of stealing hens. The first time, I found him at John De Puy's, under a bed. I arrested him and brought him before a magistrate. The fowls that I arrested him for taking belonged to Jonas Underwood. That was before he was taken up for stealing the horse. He got away from me on the warrant for stealing hens. When I got the warrant for stealing the horse, I found him on a canal boat, and brought him back. Before I got to him, he told the steersman to lay up, as he wanted to go ashore. I told the steersman I had two warrants for the prisoner. The prisoner said it was a damned lie—that I had no warrant for him. I arrested him and brought him back. I found a bottle in his pocket. He was discharged on examination for stealing the horse, for want of proof. Two or three weeks after, he was again arrested. One Jack Furman had, meanwhile, been arrested on the same charge, who had stated that the prisoner stole the horse. I recollect the prisoner's appearance at that time. He moved his eyes without moving his head, and stooped some. He had a peculiar smile which I noticed. I think it was about the same smile that I see now. I don't know but there may be some difference. When I arrested him, his answers were brief and short; generally Yes or No. When I first saw him after the murder, I asked him how his hand came hurt. He said, "Stabbing—stabbing." I asked how he came to commit this crime, but he made no answer. I asked him the second time, when he said, "I don't want you to say any thing about it." I said to him that we were alone, and he might as well tell me how he came to commit the act. He replied, "You know there's no law for me." I asked what he meant by that. He said, "They ought to pay me." I asked how he came to kill the little child. He said, "Didn't know as 'twas a child." I then asked him how he left there. He said, "Went to barn and took a horse." I asked how far he rode that horse. He said, "To the settlement." I asked what then. He said, "The horse fell down with me, and I left it." I asked which way he went then. He said, "Came right down." I asked him which way he went. He said, "To where I got this horse." I asked where he went then. He said, "To Syracuse." I asked what time he arrived at Syracuse. He said, "'Bout daylight." I saw him in jail on the Monday following, and talked with him. I don't think he was

insane. I never saw him when I thought he was. I have seen insane people, but all I have seen look differently from what he does. They generally have a wild look of the eye.

CROSS EXAMINATION.—When I had the conversation with him he was under arrest. He has always denied stealing the horse. I never believed that he did, and I believe that is the general opinion. I swore on the last trial that I had no idea that he ever stole the horse. I said on the preliminary trial, that the prisoner now appeared different from what he did on the other trial, or when I arrested him before. It is my opinion now that he is not as cheerful as he was before he went to prison. He was always bragging about his running; said he could run away from me. I have said that I didn't think he was insane. I have said that there was no defence for him. I gave it as my opinion that he was sane, as I never had any other opinion. It is my opinion that this is not an honorable defence. I think it is probable that I have said so.

ARETUS A. SABIN, called and sworn, testified: I have known this prisoner fifteen years. I saw him at Captain Warden's, and in the streets after he left there. I always took him to be a down headed fellow. When spoken to he would turn up his eyes. I next saw him in the State Prison, in the hame shop. He had that smile there which he has now when spoken to. I have seen him about the streets twice since he came out; once he was sawing wood. I assisted in getting him into jail, and talked with him some after he was in his cell. I can't give his words, but the substance was that the persons he had killed were the means of getting him into the State Prison. I told him they were not. He made no reply. Mr. Ethan A. Warden was there, and conversed with him. [See Warden's testimony for conversation.] I think when a boy he was stiller than other boys. I think there is some resemblance between his smile and that of his father's. I never considered him insane. I have seen a good many insane people, and I never saw one but what I could discover it in their appearance.

CROSS EXAMINATION.—I don't know but all fathers and grandfathers smile. The prisoner was no more nor less playful than other boys. I saw him in prison before his striped dress was put on him. I then told him I was sorry to see him come in so young. He wept. I don't know that I had any other conversation with him than that alluded to. When he said they were the means of sending him to prison, he did not say what he was sent to prison for.

JEFFERSON WELLINGTON, called and sworn, testified: I knew Freeman when he lived with Mr. Cadwell. He was a pretty ugly fellow. He took away my umbrella, one time, and threw a flat iron at me, and threatened to kill me. I lent him an umbrella to go down and see his friends, and he did not bring it back. I told him if he did not I should whip him. He did not, and I whipped him. He then threw the iron and threatened to kill me. He was sociable, about like other boys. I don't know as I ever saw any

thing more ugly than he was contrary. He was much the same then as now in his appearance.

Cross Examination.—He brought back the umbrella after I whipped him. I used a horse whip upon him. He was angry, and so was I. I don't know as I was ever afraid of him. He left Cadwell's before I did.

Josiah Sherwood, called and sworn, testified: I have known the prisoner since he was a small boy. He was a still boy, and spoke only when spoken to. He was always crooked; his head inclined forward. Never took much notice respecting his smile. He looks like his father. Do not discover any difference in him, except his deafness. Never discovered any insanity about him; yet he might have been insane when he killed the people, and I not know it. The most I can say, is, I never saw any insanity about him.

Cross Examination.—I am overseer of the poor, and have had several cases of insanity under my charge. I think, from what has come under my observation, that there is no difficulty in discovering insanity where it exists. Cannot say but that it may be difficult to discover some cases of insanity.

Thomas F. Munroe, called and sworn, testified: I am police officer of this village. Have known the prisoner since he was a boy. He was about seven years old, and perhaps older. I knew him when he lived at Cadwell's. He was not as large as he is now. He was stout and springy, and ugly tempered. Have seen him throw stones at other boys. I have a boy about his age, at whom the prisoner once threw stones. I spoke to him about it once, and picked up a stick and told him that if he didn't let the boys alone I would lay it over his back. Was present when he was brought up for stealing a horse. I then talked with him some, but he protested that he did not steal the horse. He said another negro took him, but that he came to Auburn in company with him. I don't see any change in him, only that he is a little more bent over, and a little more down cast than he was. I always noticed the manner in which he turned up his eyes. Have seen him sawing wood in the street, and he would look up at me, as I passed, in that way. Have seen him smile a good many times, and cannot see any difference between his smile now and as it was then. After the murders, I had a conversation with John De Puy about this prisoner, in which De Puy said he was not crazy. Never saw any insanity about the prisoner. Never suspected it, nor heard that any body else did, until after the murders.

Cross Examination.—He was a boy when I first knew him. When he lived at Cadwell's, I saw him frequently. He was quite quick and active; not much different from other black boys. He was ugly, and about the ugliest boy I ever saw. I don't think his appearance is as intelligent as that of colored people generally. I think perhaps he is as intelligent as the middle class. If he heard and had not that down cast look, he would appear as well as any of them. He denied stealing the horse. I did say something about manufacturing witnesses on the former trial. I said to several that I thought they had been up to the jail to be manufactured into witnesses. I

think I have said that they were either perjured or devilishly mistaken. I think the prisoner can hear. I think he has heard my testimony. I served subpœnas on the first trial for the people, at the request of the district attorney. I have taken a part in this trial, so far as this, that I like to see the law sustained and the people protected, and have served subpœnas on twenty or thirty witnesses.

SILAS BAKER, called and sworn, testified: I knew the prisoner when he was in the yard of the State Prison. I did night duty in the State Prison. I never knew that he was disturbed of his rest in prison. I punished him twice in prison, once for striking another convict and once in relation to hanging out yarn. His appearance in the prison was much the same as now. He was more still and quiet than other convicts. I noticed his smile in prison, and the same smile in the chapel, when he had nothing to smile at. I never supposed him to be insane. I have not discovered in him any such appearance. There is always something about insane men which indicates insanity.

CROSS EXAMINATION.—Those whom I have seen insane were admitted to be insane before I saw them. I flogged the prisoner with a cat o'nine tails. I saw him smile in the chapel as he does now, and without any apparent cause. It occurred to me that at such times he was occupied with his own thoughts. It did not occur to me that he was insane. I suppose an insane person might smile without any apparent reason, but nothing is more common than to see convicts smile without apparent cause. I never had any conversation with him except in relation to his work. If he was insane his insanity must have been slight. He generally obeyed the rules of the prison.

JAMES PARISH, called and sworn, testified: I was at work in the dye house in the prison, when the prisoner was there. I don't see any material difference in him now from what he was then. I recollect that he smiled frequently without my knowing what he was smiling at. He did his work regularly. I saw him since the murder and asked him when he became deaf. He said last fall.

CROSS EXAMINATION.—He was punished in the State Prison, once for striking another convict and once about some yarn. He was not punished for stealing that I know of. I never knew whether he could read or not.

JOHN P. HULBERT, called and sworn, says: I am a counsellor at law and reside in Auburn. I was in the jail a short time after the prisoner was arrested, and there heard some conversation between him and Doctor Fosgate. The doctor directed him to stand up, sit down, and to hold his arm in a certain position, &c. and asked him various questions respecting it. He asked if it did not pain him. He said it did not much. I did not see any thing that led me to believe that he was insane. I was here last winter during the trial of Wyatt, for murder. I may be mistaken about seeing the prisoner in the court house then, but my impression is, that he was here.

CROSS EXAMINATION.—I have read upon the subject of insanity, but mostly in books of Medical Jurisprudence. I have never devoted my attention particularly to it, however. I have not seen much of this prisoner, but from what I have observed of him, I have not much doubt that he is sane. My opportunities for judging, have been limited. Had I more knowledge of him I could judge better in relation to the state of his mind than I am able to now.

AUGUSTUS PETTIBONE, re-called, testified: I am the keeper of the jail where the prisoner has been confined. I have not discovered any insanity about him. I have heard no disturbance from him nights, except one night when I forgot to give him his bedding. He then rattled the chains and knocked against the wall. The man carried him bedding. He has always eaten his rations well and been in good health, so far as I know.

CROSS EXAMINATION.—This disturbance occurred in the month of May. He is chained to the floor. The floor is stone, and he was left that night accidentally without bedding. I did not hear what he said. On Thursday or Friday last, the attorney general told me that he did not want me to let any more go in to be manufactured into witnesses. Dr. Hun and Dr. McNaughton came the next morning and admittance was refused.

ROBERT SIMPSON, re-called, testified: A day or two previous to the murder, the prisoner came to me to get a knife ground, and ground it himself. I do not know whether he fitted the knife to the stick at my shop or not. I could only judge that he did, from his actions.

BENJAMIN F. HALL, called and sworn, testified: I reside in Auburn, and am a counsellor at law, by profession. I have seen the prisoner. I never noticed him particularly, however, until he was brought to the jail for killing the Van Nest family. At the request of the examining magistrate, I went with others to the jail, to aid in repressing any disorder that might arise, and preventing any violence to the prisoner, when the officers, who were near at hand, should arrive with him. An immense concourse of people had assembled about the jail for some purpose, and many apprehended that an attempt would be made to rescue the prisoner from the officers, for the purpose of punishing him summarily, for killing Van Nest and his family. Upon the arrival of the officers with the prisoner, I saw him, and assisted in lodging him in jail. Since then I have seen the prisoner but once, except in court. That was during the preliminary trial. Being at the jail for another purpose, I was requested by Doctor Spencer, of Geneva, who was then there, to interrogate the prisoner. We entered his cell together. The prisoner was standing when we entered his cell, but afterwards sat down. I asked the prisoner if he knew Captain Chase. He said he did not. I asked him whether he knew me. I got no answer which I could understand. I asked him if he worked in the stone shop when in prison. He answered Yes. I asked what kind of work he performed. He said, "Worked 'round at all kinds of work." I asked who the keeper in that shop was. He said, "Captain

Green." I asked him to relate his difficulty with Tyler. He said, "I wanted to get out—didn't want to stay there—told him I was clear—he went up on to the stairs and came down," pausing between the sentences. I then asked what Tyler then did. He said, "He struck me." I asked what Tyler said he did it for. He made no answer. I repeated the question, to which he replied, "He told me to go to work, and I wouldn't." I asked where he worked when this happened. He said, "In hame shop." I asked where he went when he left that shop. He said, "They sent me into shop they were building up." I asked if it were a brick shop. He said, "Yes, sir." I asked how many brick shops there were in the prison. He answered, "Two," and then added, "One was built whilst I was there." I asked which shop was built first. He said, "One on the west side." Knowing that there was no shop on the west side, I asked which way it was from the reservoir. He said, "The right side." I asked what was done in that shop. He said, "Filing and blacksmithing." I asked where the shoemakers were taken when the old shop was removed. He said, "B'lieve they took 'em over to another shop." I asked if he knew Mr. Robert Muir, a contractor. He answered Yes. I asked if he had men making bed ticking. He said, "Had some men; don't know what they did." I asked him if he were ever in the cutlery shop. He said, "Was in there one time." I asked if he knew how they polished knives. He said, "They've wheels." I asked what moved the wheels. He said, "Go by steam." I asked whether he had good food. He said, "Pretty good." I asked when he came out of prison. He said, "September." I asked how many years he was imprisoned. He said, "Five years." I asked who the head keeper of the prison then was. He said, "Captain Cook." I asked where he was convicted. He said, "Here." I asked the name of the judge that sentenced him. He said, "Don't remember." I asked whether the judge was an old or a young man. He said, "Was a heavy, thick set man." I asked if he saw him in this court. He said, "Don't know as I did." The hour having arrived for the opening of this court, we retired from the cell. In that examination I did not discover any form of insanity that I am acquainted with. So far as that opportunity enables me to judge, his mind is of a very low order, and quite feeble, but I did not discover, from his manners or answers, that he was deranged.

Cross Examination.—Q. How long were you with the prisoner on that occasion?

A. From fifteen to twenty minutes.

Q. Have you examined the prisoner at any other time?

A. I have not.

Q. Was that examination sufficient, in your opinion, to determine the question of his insanity?

A. It was not; and hence my answer that I did not discover any form of insanity that I am acquainted with.

Q. Do you consider a conversation of twenty minutes a thorough examination of the prisoner?

A. I do not; nor do I believe that any one can make a thorough examination of him, in that period of time.

Q. Might he not have been insane without your discovering it?

A. I can only say that I did not discover it.

Q. Have you ever seen insane persons from whose appearance you could not detect their insanity?

A. I have seen those who were said to be insane, but whose insanity I did not discover from their appearance.

Q. Where did you see those persons?

A. In the State Lunatic Asylum, at Utica.

Q. Did you converse with them?

A. Not much, if at all, so far as I now recollect.

Q. Do you consider the prisoner's mind sound?

A. I am not able to say whether some of his mental faculties have, or have not, been impaired. He is a stolid taciturn, ignorant being, having mind enough to comprehend my questions, and to make brief answers to them. Beyond that I cannot answer advisedly.

Q. Have not brutes a mind?

A. They have that which is called mind, but have no intellectual faculties.

Q. Did you ever see a human being who had not some intellect, and some mind?

A. I recollect of no instance where there was not some glimmering of intellect and mind. I never saw a case of perfect idiocy, or dementia.

Q. Can insanity exist where there is no mind?

A. No, sir. The manifestations of mind depend, I suppose, upon the health and activity of the brain. When that is diseased the mind is disordered, and that I suppose to be insanity. When the brain ceases to act, there can be no longer any insane manifestations, for death ensues.

Q. Then you consider insanity a disease?

A Medical writers so regard it.

RE-EXAMINATION.—Q. Are you a lawyer by profession?

A. The practice of the law is my business.

Q. Cannot a lawyer as well detect external indications of insanity as a physician?

A. If insanity were apparent. perhaps a lawyer might detect them as well as a physician. In doubtful cases, I think a medical man, who has made that subject his study, could detect them better.

Q. You seem to qualify your opinion. Have you any doubt at all but that the prisoner is sane?

A. My answers must be according to the knowledge that I have of the prisoner. He is a low, stupid, and ignorant being; yet in my examination I did not discover in him any form of insanity that I am acquainted with.

REV. ALONZO WOOD, called and sworn, testified: I am chaplain at the

State Prison, and know this prisoner. First saw him there about four weeks prior to his discharge, and from that time until his discharge I saw him almost every day. I also saw him the Monday evening preceding the murder. He was at a barber's shop, in town, where he requested to have his whiskers shaved off. Never saw any insanity about him. When he left the prison he appeared to feel well. When in there he made some music and fun about him. I noticed no stupidity or dullness.

Q. Are you aware that a majority of the convicts in that prison think that they are entitled to pay from somebody for the time they are in prison?

Objected to. Objection overruled, and exception.

A. I cannot say that a majority think so. Have heard some of them say that they were, but cannot say that they were serious about it.

Q. But is it not common for convicts to speak in that way?

A. I have heard men speak in that way; or, have heard them say that they were entitled to consideration, on account of extra services. But I cannot say that such an impression is common.

Q. But did not Mr. Townsend, the former chaplain, testify that it was when he was there?

A. I believe he did—and it may have been then; but I do not know that it is now.

Cross Examination.—In visiting the cells, in rotation, I first spoke to him. I asked him how he was—how he got along, and many other similar questions. Saw him at the time of his discharge, and expressed the hope to him that he would so behave in future as to never be imprisoned again. Whilst in prison, I asked him if he wanted a bible. I understood that he said that it would be of no use, as he couldn't read. After being dressed to leave the prison, he was taken to the clerk's office, where a check was presented him to sign; but he declined signing it. He was paid three dollars. He said he had been imprisoned five years unjustly, and he wasn't a going to settle so. The clerk told him he could not have his money unless he signed the receipt. He said that he couldn't write. The clerk told him that he must make his mark. He then did so, received his money, and went away.

Harry Lampkin, called and sworn, testified: I keep a public house at Port Byron. About two weeks before the murder, the prisoner and three other black fellows came to my house, on Sunday. They put their horses under the shed—took something to drink—stayed about half an hour, and went away. The prisoner appeared sulky. They had some conversation about the pay, in which the prisoner took a part. The prisoner untied the horses, paid the ostler, and appeared to be driver. He came in and got some change at the bar, and ordered some liquor to drink, and they drank around. I didn't see any thing crazy in him.

Cross Examination.—I testified before, that it was beer. We call every thing beer, now-a-days, as it has to be beer before it's any thing else.

Think they drank beer one or twice while there, and my bar keeper says they drank liquor once.

Dr. Charles A. Hyde, called and sworn, testified: I am a physician and surgeon. Have been in practice twelve or thirteen years. Have visited the prisoner twice in the jail, for the purpose of examination. Had never seen him before, but saw nothing in him there to make me think he was insane. From seeing him twice, it would be difficult to say that he is insane. I was rather of the opinion that he was not.

Cross Examination.—I had entertained the impression before seeing him that he was insane. Upon arriving there, in company with other medical men, and examining him, I was not able to discover any derangement of the mental faculties. He appeared dull and stupid, and disinclined to talk much, yet in all that I saw I discovered no insanity. I have seen many cases of insanity, but my opportunities for treating it professionally have not been very extensive.

Dr. Samuel Gilmore, re-called, testified: I have seen the prisoner in jail. Several other physicians were present. I have heard the material parts of all the testimony, but not all of it. I heard the prisoner read and count, as spoken of by other witnesses. I also talked with him about the murder, and whether he did not consider it wrong; also why he ran away, and why he stole the horse. It is a difficult matter for me to separate my own examination of the prisoner from what I have heard testified about him, yet it is my opinion from my examination of him that he was not insane.

Cross Examination.—I do not see any thing in his acts in relation to the murder, that indicates insanity. I think his preparation of the knives, and the concealment of them, and his going in the night, indicates forethought, calculation and intelligence, which are indications of sanity. He seems to have planned the homicide with as much skill and care, and carried it out as well as any sane man could. I don't think the murder indicates insanity, but it does indicate great depravity. I think his inability to read or count well, indicates ignorance. He may not be as intelligent as negroes generally, yet he must have known that it was wrong to commit murder.

Dr. Joseph Clary, called and sworn, testified: I am a practicing physician. I have been in practice thirty-five years. I have visited the prisoner three times for the purpose of examination. I had some conversation with him each time, and heard conversation that I did not participate in. I have seen so little of insanity that I don't know as I ought to express an opinion. I think nurses and those that attend the sick, will sooner discover insanity than others. I consider insanity delirium without fever. I think that those who attend the sick will discover a delirious idea sooner than a physician. I should dislike to give a decided opinion in respect to the prisoner. I have not had that oportunity of deciding that I ought to have had in order to form a decided opinion. From what I have seen of him it is my opinion that he is sane.

Cross Examination.—He may be insane. My examination of him has not been such as to enable me to give a confident opinion. I give only my prevailing opinion from what I know of him. His pulse, when standing, ranged from one hundred and twenty to one hundred and twenty-three. That might denote disease or a nervous state of the system. Doctor Willard was there, and proposed questions to him at considerable length. There is such a form of insanity as dementia. It comes from disease of some kind. Diseases have different stages. I think a man may have dementia and yet may have some memory left. I have seen dementia in old age. Whether the patient would exhibit anger, hatred or tenderness, would depend upon the intensity of the disease.

Dr. David Dimon, called and sworn, testified: I am a physician and surgeon, and reside in the village of Auburn. I have seen the prisoner several times since he has been confined in the jail. I went there several times. The first time I went to see him from motives of curiosity, but subsequently at request, for the purpose of ascertaining the state of his mind. I have visited him, in all, six or eight times. Sometimes I remained with him fifteen minutes; at other times half an hour or more. The first time I saw him was soon after his arrest. I examined him at considerable length in reference to the events of his life, and the circumstances attending the murder. The conversation was conducted by questions and answers. In these examinations and his general manners and appearance, I discovered no evidence of insanity. He is ignorant and depraved, yet I was unable to discover wherein any of his faculties have been disturbed. I conclude that his mind is now in the same condition that it has been since he was a boy. I discovered nothing about him indicating insanity.

Cross Examination.—Q. You say that you examined him and discovered nothing about him indicating insanity?

A. I have so testified.

Q. What do you consider insanity?

A. Some derangement of the intellectual faculties or the passions, either partial or general.

Q. What do you call a derangement?

A. An alteration from the natural or healthy state.

Q. What do you call the intellectual faculties?

A. The faculties by which we reason, compare and judge.

Q. What are the affections and passions?

A. The affections and passions are the motive powers. The passions are certain emotions producing certain desires or aversions. The affections are those certain desires or aversions.

Q. What is comparison?

A. By comparison we compare two or more things with each other.

Q. What is judgment?

A. Judgment is the faculty which enables us to choose and decide be-

tween two or more things, after comparison has done its work. It may be termed the decision made.

Q. What is reflection?

Q. Comparison and judgment, or, perhaps, I should say the thought bestowed upon a subject.

Q. Do you consider the will a faculty?

A. Perhaps not strictly, yet it is generally called a faculty.

Q. What kind of a faculty is it?

A. As I wish to avoid a metaphysical discussion, I will answer by saying that the will is a faculty by which we resolve to do something. In choosing between two or more things, the will and the judgment are both in exercise.

Q. What moves the will?

A. I regard the passions and the affections as the motives of action.

Q. How is the will directed?

A. The intellect directs the movement.

Q. Is the will a power?

A. It is usually called a power.

Q. What kind of a power, physical or mental?

A. Mental.

Q. Is the will passive or active?

A. It is an operation of the mind, and is therefore, in one sense, active. So far as it is a result of action it is not.

Q. What has judgment to do with the will?

A. It is an intellectual faculty and directs the will.

Q. What is reason?

A. It is commonly called an exercise of the intellectual faculties.

Q. Is it not a faculty of itself?

A. No; for when it is applied to the faculties instead of the exercise of them it embraces several—memory, comparison, judgment, and some others.

Q. Have you had any experience in the treatment of the insane?

A. I have seen many insane persons, but have not had much experience in treating insanity.

Q. Where have you seen most of insanity?

A. I have seen most of it in the Alms House in Philadelphia, but have seen it elsewhere.

Q. Have you seen persons whom you would not know to be insane, from observation?

A. Yes; and I have seen many whom I would know to be insane at sight.

Q. Have you ever been called upon, before, to determine a case of doubtful insanity?

A. I recollect of no case where I have been.

Q. Did you ever discover insanity in any one who was not before known to be insane?

A. I think I can say that I have.

Q. In whom?

A. In a man in the State Prison—a convict.

Q. When did you make that discovery?

A. Some two or three years ago, when my brother was the physician there. I went in with him to determine whether the convict was, or was not insane.

Q. How did you decide?

A. That he was insane.

Q. What was the question about it?

A. Whether he was really insane, or whether he was feigning insanity.

Q. What was the result of that case?

A. I never heard of the man afterwards.

Q. Have you ever treated a case of partial or general insanity, professionally?

A. I have not. I have seen cases of melancholy, however, that I have treated in the same manner that I would the first stages of insanity.

Q. How does melancholy affect the mind?

A. It affects the disposition, conduct and habits, but it does not necessarily derange the intellect. It sometimes exists with and sometimes without derangement.

Q. Do you consider melancholy insanity?

A. It may be called an incipient stage of insanity, as either the intellect or passions are affected more or less, and sometimes both.

Q. May the passions be deranged and not the intellect?

A. Derangement of the passions sometimes exists without any appreciable derangement of the intellect.

Q. In a case of settled, confirmed melancholy, is not the mind more or less diseased?

A. In some degree it is, yet some people recollect, compare, judge and imagine well, notwithstanding.

Q. Will they not do all things that a sane person will?

A. I suppose so, in most instances.

Q. Does insanity frequently commence with melancholy?

A. In many cases melancholy runs into insanity.

Q. Did you say to Doctors Briggs and Fosgate, after visiting the prisoner in the jail, that you then thought him insane?

A. I did not. I have never had but one opinion about this case.

Q. Are all the prisoner's intellectual faculties in order?

A. I did not discover that any of them were deranged.

Q. Do you believe in an insanity that disturbs the moral powers?

A. I have already so stated.

Q. Then you admit that moral insanity may exist?

A. I admit the principle of moral insanity as a disease of the brain

Q. Do you consider that the prisoner's moral powers are in a healthy state?

A. It is my opinion that his moral powers are now, as they were by nature.

Q. Do you believe that his passions and affections are not deranged?

A. I think they have not been affected by disease. There has been no change in him except such as circumstances might naturally produce. He was a bad boy, committed crime, has been imprisoned for it. I presume he is now more depraved than he was, and that his depraved disposition has grown with his growth, and strengthened with his strength. He has a very low grade of intellect, and is very ignorant, but that is not insanity.

Q. Then you think there has been a change in him?

A. Undoubtedly there has been some change. His going to prison very young, and being confined there five years, would naturally produce some change; besides, he has grown older.

Q. When you were looking after symptoms of insanity, what physical appearance of insanity did you expect to find?

A. In the maniac there is a wild, glassy expression of the eye, and gen erally a paleness. Besides those, there are a good many other looks and expressions indicating insanity, which may be detected.

Q. Have you ever visited the State Lunatic Asylum at Utica?

A. I have not.

Q. Do maniacs frequently smile?

A. They do; and their smile is very peculiar and unmeaning.

Q. Is not the smile of the prisoner peculiar?

A. Well, perhaps it is; yet I don't think it indicates insanity.

Q. You say he is ignorant; what is the degree of his intelligence?

A. He appears to have but little.

Q. What is the degree of his intellect?

A. It is difficult to tell by any examinations that were made there in the jail. He was there to be tried for life; oppressed with the weight of his crimes; ignorant and deaf, to be sure, but with every motive to conceal and deceive. His intellect is of a low grade, but how much he has precisely, cannot well be determined under the disadvantages of his situation.

Q. From what you discover, can you compare his intellect to that of any other being?

A. I should not think he has as much intellect as an ordinary child of fourteen years of age. In some respects, he would hardly compare with children of two or three years.

Q. With a child of what age would you compare him, in respect to knowledge?

A. With a child two or three years old.

Q. Doctor, what is dementia?

A. Dementia is an enfeebled state of all the faculties.

Q. What are the symptoms of dementia?

A. Demented persons are submissive, and easily controlled; having no will of their own, they are subject to the will of others. They are also destitute of passion, or only capable of being momentarily affected; and are incapable of any prolonged effort.

Q. What is an insane delusion?

A. It is the thorough belief of the reality of something in opposition to the evidence of the senses.

Q. Might not the prisoner have been partially demented without your discovering it in the jail?

A. I cannot say what might be. I saw no evidence to satisfy me that he was.

Q. Might he not have been laboring under an insane delusion on the twelfth of March, and yet you not discover any evidence of it?

A. I cannot answer as to what might have taken place before I saw the prisoner. I saw no evidence of delusion there in the jail.

RE-EXAMINATION.—Q. Do you mean to express any doubt as to the sanity of the prisoner?

A. No; I think he is as sane as ever he was.

Q. Did you mean to be understood that his mind is like a child, or that his information is like a child?

A. I mean to say that he is very ignorant and depraved; that upon some subjects his information is like that of a child. I can't compare his native strength of intellect with a child of any age.

DR. SYLVESTER WILLARD, called and sworn, testified: I am a physician and surgeon, and have been in practice twenty-three years. Have been six or eight times into the jail to see the prisoner, for the purpose of ascertaining his mental condition. I engaged his attention, and requested him to tell me about the matter for which he was imprisoned. I began by saying, "Bill, did you kill them?" He answered Yes. I said, "What did you kill them with?" He said, "Well, I killed them with a butcher knife." I asked, "Where did you get your knife?" He said, "Why, I bought it—I bought two." I asked, "What did you give for them?" He said, "I gave one and sixpence for one." I asked him what he did with his knife after he bought it. He said a man helped him grind it; then he took it up to the big dam and ground it himself. I then told him to go on and tell me the whole story. Then he said, "I took the knife and carried it home, and took it to the room and hid it." I told him to go on. He continued, "Well, I let it lie there till I got ready to go out to kill." I again told him to proceed. He then said, "When I got ready to go out and kill, that night, I went up stairs and threw it out of the window." I told him to go on. He said, "I threw it out of the window, so that they shouldn't see me when I went down stairs." I told him, "Go on." He continued, "I went down stairs, myself, and went round and got my things, and then I went off up south." I then asked where

he went to. He said, "I went up to Van Nest's." I asked what he went there for. He said, "I went there to kill them." I asked what he did when he first went there. He said, "I saw a light in the house, and didn't go in when I first went there." I asked what he then did. He said, "I stayed out round the house." I asked how long he stayed. He said, "I stayed a little while, until I saw a man come out and go away; then I went into the house, and saw Mr. Van Nest." I asked what he did then. He said, "I stabbed him." I asked if he killed him. He said Yes. I am not able to give all my questions and his answers, but I continued to inquire, and he to answer, until he told me that he killed Mr. Van Nest in the house, and the woman out of doors, and the child in the bed, and that it was asleep and was covered up in the bed clothes—and that he then went up stairs, and was driven down by a man who struck him—that he stabbed the old lady out near the front gate. I asked how many he killed. He said, "I killed five." I asked whom. He said, "Van Nest, his wife and child, and the woman at the front gate." I asked how many he meant to kill. He said, "All I see." I asked what made him stop. He said, "I got my hand cut and couldn't kill any more." I asked how he got his hand cut, and who cut it. He said, "The woman at the gate." I asked what she cut it with. He said, "With my knife. I s'pose the piece that was broken off." I asked how she came to cut it with his knife that was broken off." He said, "I s'pose she pulled it out of her body." I asked what he did then. He said, "I went to the stable and got a horse, and rode him away down to Mrs. Godfrey's." He said, "I meant to kill her." I asked why he didn't kill her. He said, "I didn't like to go into the house in the dark." I asked if it did not look hard to kill those folks. He said, "It looked hard." I asked what he did after that. He said, "I rode down back to Auburn—the horse fell." I asked what he did then. He said, "I stabbed him." I asked what he stabbed him for. He answered, "'Cause he hurt my leg." I asked what he did then. He said, "I went on to the middle road to Skaneateles, and took another horse, and rode on towards Syracuse." I asked about his knife. He said, "Threw it away near Syracuse." I asked where he was going. He said, "I was going out of the county until my hand got well, and then come back again." I asked if he knew what they did with people that murdered. He said, "They hang 'em." I asked if he thought they would hang him. He said, "I don't think they will hang me." I asked what he thought they would do with him. He said, "I thought they might kill me." I asked why he killed those people. He said, "Because they put me in State Prison, and I couldn't get my pay." I asked if he thought Van Nest put him in prison. He answered No. I then asked what made him kill those innocent people, and said it was not right to kill innocent people. He said, "I meant to kill every body."

After getting these matters of plain relation, I undertook to excite his fears. I then said to him that they were going to hang him, and that we

had come as his friends to see if we could do him any good. I asked him what word we should carry back to court. He said "I don't know." I asked him to tell us something. He said, "Don't know." I asked if we should not tell the court that he didn't do it. He said, "No, that wouldn't be right." We then told him that there had been a great deal of noise about this matter, and it is time it was settled. I then inquired how much he would ask if I would pay him off. He said, "I don't know." I then asked him to say something—no matter what. He said, "I don't know." I asked if it should be one dollar or one hundred—to say something. He said, "I don't know." I handed him a dollar bill, and asked how much it was. He told me rightly, and the same in regard to a three dollar bill, but a ten dollar bill he called one. I talked with him at great length, and felt his pulse. In all my examination I did not find evidence sufficient to make me think him insane.

Cross Examination.—There are symptoms of insanity in the prisoner, but there is not in my opinion sufficient evidence to make it out. The act of killing itself, is such as insane persons might perform, but it is not enough, of itself, to make out insanity. I have not heard of any act in this matter that necessarily indicates insanity. A sane mind, means a sound, well regulated and well ordered mind; having the regular exercise of reason and the other faculties. An insane mind is the reverse—an unsound state of the reason and other faculties, or their irregular exercise. A demented man may have a temporary insanity, and yet he cannot be said to have an unsound mind. His mind may be sound, but its exercise irregular.

Q. Does drunkenness affect the reason?

A. It sometimes destroys it, or in such a state it is sometimes gone.

Q. Where does that reason go?

A. I never kept track of it, to know where it is gone.

Q. Does drunkenness affect the intellect?

A. It is not brought into exercise.

Q. Where is his intellect at such times?

A. I cannot say where. A drunken man has not the regular exercise of his mind.

Q. How is it when a man is perfectly intoxicated?

A. He exercises his reasoning faculties so far as he has any.

Q. Is the irregular exercise of the faculties in insanity continuous or occasional?

A. Sometimes continuous, but sometimes intermittent.

Q. When the exercise is irregular, is not that a temporary insanity?

A. A man who has an irregular exercise of the mental faculties for once, may or may not be insane.

Q. Is insanity generally chronic?

A. It is not necessarily chronic.

Q. Is it generally active or violent?

A. Sometimes it is violent and active, at others inactive.

Q. Have you had any experience in insanity?

A. Not a great deal; I don't profess to be an adept, yet I have seen a few insane persons.

Q. Is insanity a disease?

A. It may or may not be a disease of the physical *structure* of the brain. There are functional derangements without organic disease.

Q. Do insane men have lucid intervals?

A. They often do.

Q. Are men temporarily insane?

A. It is not always permanent. Persons may be bewildered, as by a blow, for instance, and not show the effect of it afterwards.

Q. Might he not have been insane on the twelfth of March, without its being discovered now?

A. If he is diseased at this moment, and not the last or next, the disorganization would be hardly discoverable.

Q. Why, in your opinion, did the prisoner require prompting?

A. Whether he thought I didn't want to hear any more, or whether he had a motive for stopping, I cannot say.

Q. Now, sir, was it not because he could not proceed?

A. I think he requires impressions to be repeatedly made on him, to induce him to narrate.

Q. Is he not, sir, a very dull man?

A. In memory he is not dull; it is very tenacious.

Q. If he had motives for his incoherence, what, in your opinion, were they?

A. I know not what his motives were; whether he thought I wanted to hear no more, or whether he didn't choose to answer.

Q. Unexplained, was it not an evidence of dullness?

A. It was, perhaps, one evidence of dullness.

Q. Did his failure to go on appear to arise from inability or imbecility?

A. I cannot say that it arose from either; I cannot tell why he did not go on.

Q. You are sure, I suppose, that he did not go on?

A. When I jogged him he went on.

Q. Did you ever see a sane man, twenty-three years old, who did not know whether he could read or not?

A. I have no recollection of ever having seen one.

Q. Could he read correctly?

A. He was ignorant of words, but knew his letters.

Q. Does he not think he can?

A. He appears to think so.

Q. Was it not strange that he thought he could read when he could not?

A. It would not be strange if he thought he did read.

Q. May not a man be insane and yet be able to remember?

A. It is supposed that there may be some forms of insanity in which memory does not immediately participate.

Q. May not a man be insane without any appreciable disturbance of his intellect?

A. There is a form of insanity laid down in the books, where the passions, emotions and affections are deranged, without any appreciable disturbance of the intellect, but my impression is that a derangement of the intellect generally follows.

Q. What is your opinion of the prisoner's conscientiousness?

A. There are instances in which he has manifested conscience, or power to distinguish between right and wrong; but it is comparatively inactive, as is shown by his crime. His conscience is dull and sluggish.

Q. How do you distinguish between sluggishness and morbidness of conscience?

A. A conscience may be sluggish when, in the face of a flagrant act, you cannot bring it to bear upon that act. A morbid conscience is as likely to be excited by the most trifling offence as it would be over the dead bodies of those they have slain.

Q. Upon what does a man's conscience depend?

A. Its proper cultivation and exercise, depend upon himself.

Q. Doctor, may not the prisoner's conscience be in a morbid state?

A. He has shown no signs of morbidness of conscience.

Q. Do not his acts, some of them, indicate that his mind was disordered?

A. I suppose you ask that in reference to the question of responsibility. His acts evince some intelligence and great depravity, but I think him responsible.

Q. Why do you think him responsible?

A. He has been capable of planning and carrying into execution, and that, in my estimation, proves him to be responsible.

Q. Are there not cases where insane men plan and execute homicides?

A. There may be cases of insanity in which a person may be capable of carrying out plans bad in themselves; but whilst he may plan and carry into execution, he will generally approbate his doings and take no pains to avoid the consequences. But such was not the case with the prisoner.

Q. Was the prisoner capable of comparing?

A. He distinguished between hanging and killing.

Q. What do you suppose was his motive in killing these people?

A. He may have killed them from revenge, and it may have been done for pay.

Q. If pay was his object, how could he get it by murdering that family?

A. He sought to get his pay peaceably, but could not get it; and he may have considered killing to be the best compensation he could get—revenge.

Q. Was that a sufficient motive for such an act?

A. It appears that he has stated that he thought he would kill around.

If that were his reasoning, it is evidence of his weakness in telling that if he killed around the country, they would pay him.

Q. Do you see any evidence of unsoundness or soundness in the fact that he held conversation with you so familiarly?

A. I do not. He may not have comprehended the consequences of communicating the facts, but that weakness falls short of insanity.

Q. How do you explain the idea that he did not expect to be hung?

A. I cannot tell where such an unlikely idea came from; but I think that he did not suppose his telling me increased his danger.

RE-EXAMINATION.—Q. Doctor what did the prisoner say he stabbed the horse for?

A. He said he stabbed the horse because he fell down and hurt his leg.

Q. Did you find the prisoner always awake?

A. No; we once found him asleep.

Q. When?

A. During the trial and after the adjournment of the court, whilst a jury was being obtained.

Q. Did you say any thing to him about bones?

A. Once, whilst talking with him with a view to ascertain the state of his mind, I said to him that the doctors wanted his bones.

Q. What were the words used?

A. I said, "The doctors want your bones, and want to know if you are willing that they should have them. What do you think about it, Bill?"

Q. What was his reply?

A. "I don't think much about it," and to the question repeated, he said, "I don't believe it."

Q. Did you ask any thing further about the bones?

A. Yes; I asked him if he ever saw any bones—and he said yes. I asked where. He said, "In Doctor Pitney's office."

Q. Did you ask him any thing further in respect to the bones?

A. I asked him again if he did not believe they wanted his bones, and he then answered No.

Q. What is the reputation of Doctor Pitney, as a medical man?

A. His standing is very respectable, and in surgery his experience is very great.

DR. LEANDER B. BIGELOW, re-called, testified: I have been in practice twenty years, and reside in Auburn. I have resided here twenty-six years this fall. I am now physician to the State Prison, and have been, in all, about seven years—I have been connected with the prison nine or ten years. I have had more or less insane persons in the prison, and those who feigned insanity. I have had a partial acquaintance with the mother of the prisoner for the last eighteen or twenty years. She is a hard working woman, but is subject to intemperance. Jane Brown has not resided in this place for some years. She was a daughter of Harry Freeman. I never heard of her

being crazy, until the commencement of this trial. I never saw any thing to indicate insanity in her, except ordinary intoxication. I have not seen Sidney Freeman much of late years. I think him an insane man. I remember his insanity from the singularity of his delusion. He imagined that Jesus Christ was in his throat, choking him. I remember that this prisoner came twice, during his confinement in the prison, to the Hospital. I merely knew him as a child before he went to prison. I first saw him in jail, at the commencement of this court. I was requested to go there by the district attorney, and went at his urgent request. I had been before requested by Dr. Pitney to visit the prisoner, and had refused.

I have seen him in jail a number of times—from six to ten times previous to the sixth of July. I went to see him with the view to satisfy myself in reference to his sanity or insanity. I wrote down my questions and his answers, at the time I questioned him. I may have put some questions to him without writing them down—once, when Dr. Coventry was in. With this exception, I think I have done so when I went for the purpose of questioning him. At the examination, when Dr. Coventry was present, I asked what was going on in the court, at his suggestion. He answered, in effect, that he thought some witnesses were sworn. He said he stopped at the first house this side of Van Nest's. I think I then asked him, "Why didn't you go in?" He answered, "The door was fastened—I took hold of it, and couldn't get in." He said he heard a sound in the house. I do not think the remark which he frequently makes about his being confined in prison, is an evidence of insanity. I do not think this is an extraordinary remark, from a convict of his degree of intellect. I do not discover any thing that I consider an insane delusion in this man's case. I have seen him hold a book and designate letters correctly, but he did not pronounce words by the combination of those letters. Have seen him in court. Do not consider it an evidence of insanity that a man thought he could read when he could not. I should think there would be no difference, necessarily, in pretending to read when he could not, and not knowing how. Should not think him insane from his manner of counting. Should think it might be from want of education. Do not see any thing in his external appearance that denotes insanity. Have seen this smile—have seen it continued to a pretty hearty laugh. I did not consider it an idiotic laugh. We both laughed at the same thing. I have seen the prisoner's grandfather within the last year. The old gentleman is a very pleasant man, and never speaks without smiling—he smiles generally before speaking. I think what is thought smiling, is not; but is done by turning his tobacco in his mouth. I see no evidence of insanity in his smile. His getting up nights while at John De Puy's, without any other circumstance, would be to me an evidence of insanity; but taking De Puy's testimony—his going to different persons and telling them not to let him have liquor, is an evidence that he did drink, and of his getting up to drink and being intoxicated. In this case, if the killing were an insane act, I should

look for the getting up nights to immediately precede the act. So far as I have examined this man, I don't know that I can designate a symptom of dementia. His attention is readily called and attracted. I have not noticed that his attention was easily called off. In dementia memory is destroyed. I find no difference in the memory of the prisoner in recent and remote events. The prisoner remembers as well what occurred five years ago, as five days. From the examination I have had, my impression is that he knows what is going on in court. He knows the subject matter of this issue. I came to this conclusion from asking him questions. Don't know as I have occasion to suspect that he has answered me otherwise than honestly. Can't say I think he has answered me freely. He has required frequent urging before he would answer. When he approached the scene of his murders, he would stop and would go no further, except by prompting. That prompting consisted in saying, "What then"—"What next"—"Go on," &c. When speaking of his escape, he has given me the principal points from taking the second horse down to Phœnix. He said, "I thought I would go down back there and cure up my hand." If these things he told me should prove true, it would make no difference in making up my mind. His statements may be confused, at times, when a good many are in the cell at once, or when two or three ask questions at the same time. Where he makes mistakes, it may or may not be from design. I heard Mr. Austin's testimony. From his testimony, I think he either misrepresented to Mr. Austin, or had forgotten; and from my knowledge of him, I think he did the former. I think he feigned when he said he was sick in the jail, six years ago—the same in the prison. Have no doubt of his ability to detail the facts of the murder. He no doubt was very much excited when he had entered upon the murder. My saying, "go on," or "what next," to him when relating the facts, I don't think strengthened his memory, but would rather confuse him if he could not recollect, and he would be as likely to take up the narration at some other point, as the one in immediate connection. I never heard him say he had "work to do," or "do more work," in my interviews with him. My impression would be, from the connection, that he meant to come back to work. I don't consider that killing people comes under the head of work.

A part of Burrington's barn stands within the limits of the road—the door opens on the road. The house stands some sixteen feet from the road. Taking all the evidence in this case together, I am satisfied that HE IS AN IGNORANT, DULL, STUPID, MOROSE AND DEGRADED NEGRO, BUT NOT INSANE.

CROSS EXAMINATION.—I did not go to the jail for the purpose of confusing the prisoner. On the contrary, when I found that when numbers came in it did, I stopped. My object in saying to him, "go on," was to see if he could go on with a connected chain of events. When he was told to go on, it did not seem to confuse him. He seemed to take up the chain and go on. When a child is told to go on, in reading, it is simply to go on in the process of reading. When I told Freeman to go on, it was to have

him continue, because he stopped. I do not think he smiles at all times, when others think he does. I went to the jail for the purpose of preparing myself as a witness, for the purpose of testifying. I was on this stand on Wednesday, and went into the jail afterwards, and came into the court and testified to questions and answers put and answered then. I was requested by Dr. Pitney to go to the jail, who said Mr. Seward wanted him and some other physician to go and examine the prisoner. I told him I had not seen the prisoner, and would not go in. I did not go. I made the same objection to the district attorney, at first.

RE-EXAMINATION.—I have known men in prison, over twenty-three years old, who could not multiply two by four, and who could not read. I have seen both white and colored men in that condition. A few days since, I examined a prisoner by the name of James Madison. He is a negro, twenty-four years of age. I asked him to let me hear him count. He said, "Twice ten is twenty—three times ten is fifteen." I asked him how much two times four was. He said, "It would be nine." I asked how many days there were in a week. He answered Six. I asked how many shillings there were in a dollar. He said, "I couldn't tell that." I asked how many days there were in a month, and how many cents there were in a shilling, and he made the same answer. I asked how many hours there were in a day. He said, "I don't know, sir—I couldn't tell." He counted up to thirty regularly, and then said, "forty, fifty, sixty, seventy, eighty, ninety, sixty, forty, forty-one, forty-two, forty-three, forty-five, forty-seven, forty-eight, forty-nine." I then said, "Then what?" He replied, "I don't know—I can't make it out." I asked how many quarts there were in a gallon. He said, "I can't tell." I asked how many pecks there were in a bushel. He said, "I guess it is three pecks—three or four. Let me see—I believe it is two pecks in a half a bushel. I guess it is four pecks in a bushel." I asked how much six and seven were. He said, "It would be thirteen." I then asked him to count again. He began with "ninety," and continued, "thirty, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, forty, fifty, sixty; that's as far as I went the first time—I can't go no further. Stop—I can go one more—sixty, sixty-one, sixty-two, sixty-five, sixty-seven—there, I won't count any more. That's as far as I went the first time, and I made a balk." The other was a white man, by the name of Jacob Miller. His age was twenty-nine. Seeing him in the prison, I called him up to me and asked him if he could read. He said he could. I asked him to call over the letters of the alphabet. He called them correctly. I then pointed to this sentence—"The old Romans used to write in the Latin language." He then began to read by saying, "T-h-e o-l-d R-o-m-a-n old man u-s-e-d seat t-o w-r-i-t-e church in t-h-e L-a-t-i-n tin l-a-n-g-u-a-g-e Jesus." I asked him if he could count bills. He said, "I can't count one bill from another." He said nine and nine were nineteen, and that six and five were fifteen, and that seven and eight were eighteen. He said three times four

were thirteen, and counted to forty-five, and from fifty to seventy-nine correctly; but he could not count correctly to one hundred. He didn't know how many pints there were in a quart, nor how many pecks there were in a bushel. I have conversed with the counsel for the people, by their request. I don't know that they expressed to me any opinion, whatever, of the prisoner. Since the decision on the first trial, I have frequently expressed the opinion that the prisoner was sane. I have seen some indications which, when taken by themselves, might indicate an insane rather than a sane state of mind; but I think they are explained by his conversation or conduct, so that I think he is not insane. I have no doubt, whatever, but that THE PRISONER IS SANE.

DR. THOMAS SPENCER, called and sworn, testified: I am Professor of the Theory and Practice of Medicine in the Medical College at Geneva. I have taught in that department ever since the Medical College was organized. I have examined the prisoner in respect to his sanity. I have had from ten to twelve interviews with the prisoner, between the first of June and the sixth day of July. These interviews averaged something like an hour each. I was present at one time when Mr. Hall, at my request, interrogated the prisoner. I noticed his answers, which correspond with the testimony of Mr. Hall, in relation to that interview. I was present with Dr. Bigelow at several interviews, and requested him to adopt the plan of obtaining written answers. At my first interview, I took with me the prisoner's uncle, who resides here. My object then was to compare the prisoner's present condition of mind with his former condition, as a test of sanity or insanity. With the same view I went to the cell with others, with whom he had lived in boyhood, to test his memory and all the faculties of his mind. The objections to other modes of examination were, that they were frequently hurried and irregular, and would tend to produce confusion of mind; especially as the prisoner was frequently told that they were going to hang him. It appears that some one had suggested the idea of hanging. I have sought opportunity to go in with every physician that asked me. I have been in with Doctors Doane, Bigelow, Pitney and Dimon. I have made such an examination that, taken in conjunction with other facts, I am enabled to form a satisfactory conclusion as to the state of his mind.

The facts as to the reading lessons, the cyphering lessons, as to the murder, and the reasons he has given for it, such as revenge, connecting it with pay for his time in prison, I have heard gone over; I have ascertained that he has slept well, eat well, and has been in good physical health generally, and, after due deliberation, I have come to the conclusion that the prisoner is sane. I have no reasonable doubt of it. I attended the preliminary as well as the present trial. I have taken careful notes of the whole testimony. I have bestowed much mental labor upon this case, that I might analize the whole testimony, and arrive at a certain result as to the prisoner's sanity. I attended the preliminary trial and heard all the testimony; and

the effect of all the evidence has been to lead me to a greater certainty; but on a question of this kind no man can feel perfect certainty. He can only feel proximate certainty. A man cannot say he sees no indications of insanity in the prisoner, for there are circumstances and actions which are common to sanity, as well as to insanity. But my belief is, that there are none of the most constant, most descriptive symptoms of insanity in this case.

Insanity is the deranged, impulsive, incoherent, deluding exercise of some or all the faculties of mind; suspending the control of conscience, reason and judgment, over the thoughts, words and acts of the patient. This definition, I believe, covers every form of deranged mind which renders a person irresponsible for his acts. Insanity, then, is a disease having symptoms—sanity, a healthy exercise of the powers of the mind. The essential point in insanity is a change—generally sudden, occasionally slow—in the action of the mind and body.

1. A change from himself, in comparison with himself.

2. A change as compared with the rest of mankind, of his own grade of mind.

It is a medical fact, that in dementia there is a want of coherence of idea and a want of attention on the part of the patient. In every form of insanity there is more or less want of attention and coherence of thought between questions and answers put to an insane patient. A man who feigns insanity always wanders more or less from a question in his answers. And why? Because the insane man always wants this coherence and attention in a greater or less degree. Other physicians have so sworn on this trial, and I fully concur in their opinions in this particular. With the exception of some confusion of thought, as I believe produced by the rapid examination and the number present at a time on many occasions, there has been a general coherence between the questions propounded and the prisoner's answers to them. So far as I have heard the details of witnesses, of examinations like to those I have made, the same coherence of thought has been exhibited wherever the prisoner was made to understand or comprehend the question. Finding, in this case, a general relation and coherence of thought between questions and answers as they have been made, the conclusion of my mind is irresistible, that the prisoner's mind must be sane.

I would, however, mention that I have instituted a course of investigation which has led me to far greater certainty than I should otherwise have felt. It was to prove, affirmatively, that sanity exists, by comparing the facts that have been brought out, with the several faculties of mind; also to compare those facts with the most constant and descriptive symptoms of insanity. To this end I divided up and marked memorically the several faculties of mind, as they are generally agreed upon by those who study the physiology of mind. I have referred to those faculties by names which every one can understand, and I have divided them into three classes.

1. The involuntary faculties, actions or feelings of mind.
2. The voluntary faculties of the mind.
3. The intermediate faculties of the mind.

The involuntary faculties I marked with the odd numbers, and they may be designated the odd, unbalancing, tempting, affective, and instinctive faculties. Of these, I make sensation, hunger, thirst, love of society, children, money, combat, fame, nature's laws, love of divine things, revenge, anger, joy, hope, fear, self preservation. Between self preservation and the voluntary faculties, I place conscience, as the essential balancing faculty between the voluntary and involuntary faculties.

The most voluntary faculties are, attention, perception, memory, understanding, comparison, combination, reason, invention, judgment, sense of justice, pleasure in right, horror of wrong actions, attention, consideration, and will, and other volitions, mental and muscular. Will, I mark as the thirtieth faculty. As aids of conscience in regulating the voluntary faculties, I would name sympathy and sorrow, for human weal and woe. We have three other intermediate faculties, and which are the essential seat of insanity. They are conception, imagination and association.

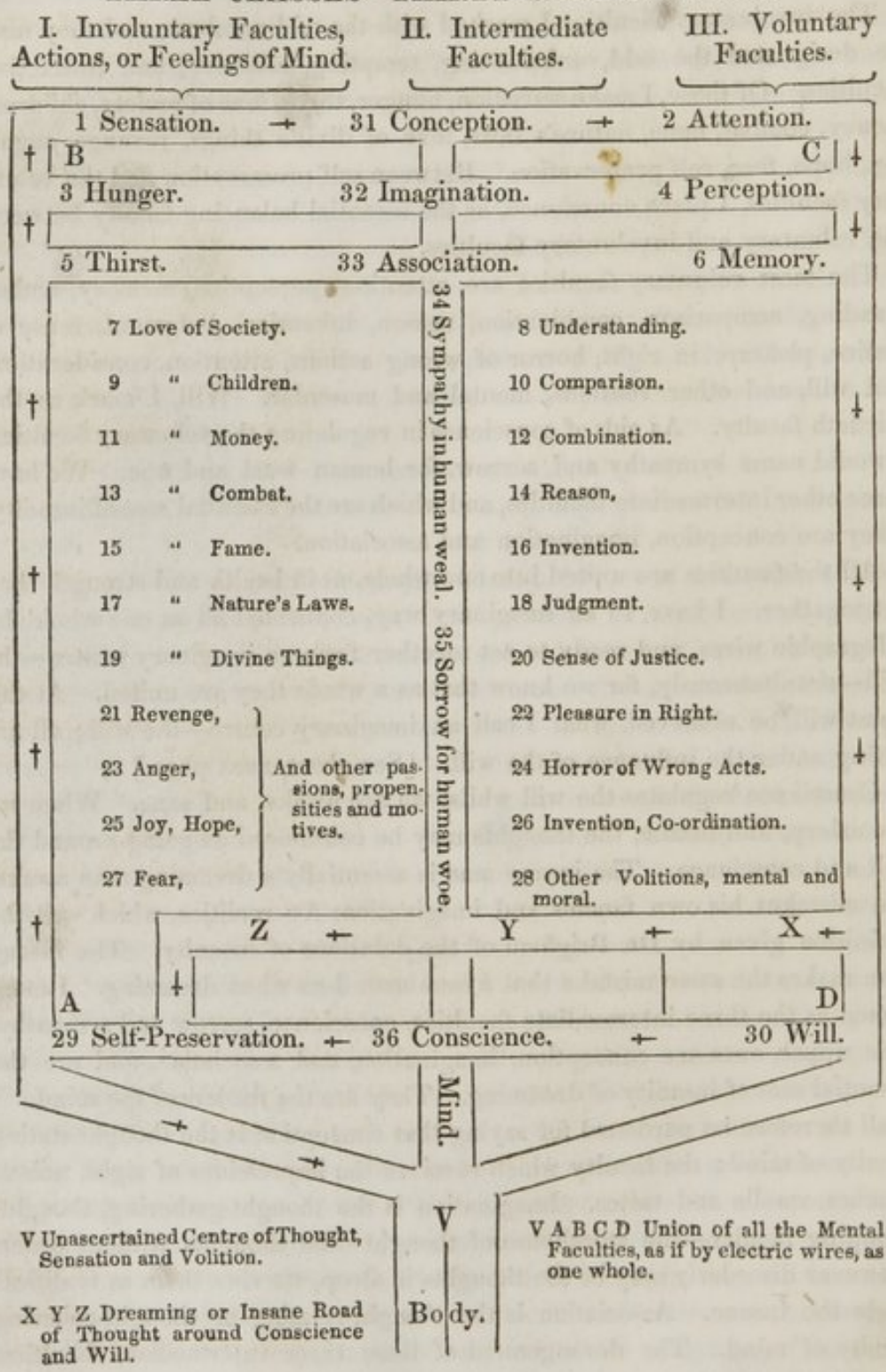
All the faculties are united into one whole, as in health and strength they act together. I have, in an imaginary way, connected all as one whole, by telegraphic wires, and ready to act together from an imaginary centre—the will—simultaneously, for we know that as a whole they are united. At this point will be observed, what I call an imaginary centre—the will; all are acting under the influence of the will. [See chart, next page.]

Conscience regulates the will whilst we are awake, and sane. When we are asleep, and insane, the thoughts may be considered as going around the will and conscience. The insane man is essentially a dreaming man awake. He mistakes his own fancies and imaginations for realities, which was the definition given by Dr. Brigham of the delusions of insanity. The insane man makes the same mistake that a sane man does when dreaming. I mentioned as the three intermediate faculties, conscience, sorrow and sympathy. The upper ones are conception, imagination, and association, and are the essential seat of insanity of dreaming. They are the feeders of the mind. I shall therefore be pardoned for saying that conception is the thought-stating faculty of mind; the faculty which receives the impressions of sight, noises, touches, smells and tastes. Imagination is the thought-gathering, thought-grouping faculty—the storehouse of thought—the thoughts without order. However disorderly may be the thoughts in sleep, we view them as realities; so do the insane. Association is the thought-relating or thought-cohering faculty of mind. The derangement of these three intermediate faculties, between the involuntary, or least voluntary, and the voluntary, or most voluntary, constitute the essential elements of insanity.

The brain, the little brain, spinal marrow and nerves, are the instruments, or media, connecting the mind with material things, and are the seat of

the disease called insanity. To illustrate my views, I have prepared the following diagram:

THREE CLASSES—THIRTY-SIX FACULTIES.



In the prisoner's case, the facts detailed by the witness Lynch, show the healthful performance of the faculties of perception, imagination and association. He recurred to an incident that occurred in the prisoner's childhood. He recollected of being whipped, and told the story. He spoke of running away to his mother, and other matters connected with that affair. In insanity we almost always have strange sights, and hear strange noises. We have negative evidence that the prisoner has seen very few strange sights, if any, and that symptom is, therefore, absent. As to strange noises, he does not hear any.

Excessive hunger will produce insanity, as at sea, where men eat each other. Derangements have lucid intervals. A man was kicked by a horse on his forehead. He had alternate turns of derangement with perfect sanity. When he was for a few moments insane, he would complain of hunger, but when sane he would not. In his sane expressions he would stop, and insane ones begin, and when his incoherent thought was over, he would go on with the subject upon which he was first talking. With respect to thirst, I see no evidence of derangement in the prisoner. In traversing this case, I have compared the acts of the prisoner with the thirty-six faculties of the mind, and by recurring to the evidence, I will show them all to be in a healthy state.

To show that hunger existed, I refer to the evidence of his furnishing himself food economically, by moving to a house where he could provide for himself. That is as a sane economical man would do. He went out in search of labor precisely as a sane man would. Now the insane are exceedingly improvident. In respect to fear, hope, self preservation, it appears that the prisoner shook in jail and wanted counsel, but didn't know the lawyers. He also said that if they would let him go this time, he would do better in future. In this he also exhibited comparison—he would do better or righter. A man who knows what it is to do righter, knows what it is to do wronger. This shows to us that conscience would yet whisper right or wrong—that conscience existed. So also did the remark about the child being rather small. In giving the reasons for committing the murder, he spoke of having been in prison wrongfully, was agitated, and one witness thought he was going to cry. That exhibited a sense of injustice, and that that had not lost its influence on the prisoner's mind. His love of money was evinced on various occasions. He went to the justice to get pay from those who owed him. He hurled a two shilling piece at the man, which may be done, however, by the insane or ill tempered. Combativeness was exhibited when he stoned the boys, and when he threw the flat-iron at the witness who whipped him at the Seminary. These were impulsive movements. In the prison, he struck a man for moving his shoes. He struck a keeper twice, and afterwards went at him with a knife. This is one of the symptoms of homicidal mania, yet it is like the symptom of moral depravity. It shows a continuance of his old habits of mind, and is negative evidence

that insanity does not exist, and positive evidence of moral depravity. Up to the time of this murder, I have not been able to find one single fact, except of a temporary character, which shows insanity. The strongest evidences of insanity to be found in the prisoner, are his getting up nights, singing, dancing, and going through a mock fight, as if with his fellow men. On the preliminary trial, these facts led me momentarily to the belief of insanity. I entertained the pleasant belief that I could testify that he was insane, until I remembered having seen just such symptoms produced by intemperance.

Revenge is here associated with the idea of pay. I myself have heard the prisoner, in substance, say, that he committed the murder from revenge. The idea of pay and revenge, associated, is the essential insane delusion, according as the learned doctors from Utica, have testified. But let us compare this with descriptions already given of insane delusions. Mistaking fancies and imaginations for realities, is one definition of an insane delusion. An insane delusion is one that is contradicted by the reason and sense of all mankind. All insane delusions, like the delusions of sane men, are the effects of false facts or reasonings. They lead men into delusions. Insane men always have these fancies—think they see something that appears a reality and leads them into delusions. How is this wrong belief here; is it an absurdity or an insane delusion? To determine this, we must see on what it is founded—how he gets up this delusion. He says that he was imprisoned innocently. He says he didn't steal the horse, and has uniformly said so. I conclude that he did not, and if he did not, then his assertion is true. It is a fact, then, that he had been wrongfully imprisoned, and had not been paid for his time. He believes he ought to have pay. If a man has worked five years for nothing, it is not an absurdity that he ought to have pay. When one boy strikes another, the strikee says, "I'll pay you for that," or in other words, "I'll get my pay by striking you." That displays the faculty of revenge. How is it here? Who ought to pay him? Against whom will he revenge himself, if the people have not paid him? How will he get his pay? Now, is this conclusion a belief that he can properly revenge himself in that way? Because the people won't pay him? Who tried him and imprisoned him five years? The people—the whole people of the state. The idea of general revenge, is therefore associated with a true fact—that the whole people sent him to the State Prison. Admitting it to be right to revenge injuries, it was right for the prisoner to avenge himself. He confesses that it is wrong to avenge injuries; he confesses that he committed the crime; and can the conclusion be resisted that he committed the act knowing it to be wrong? His knowing it to be wrong, shows that conscience was in operation.

He exhibits the faculty of attention. When a question was put to him, he always attended to it, indicating that he apprehended it, and showing that his faculty of perception was sane. He remembers, he understands

and comprehends what is said. His answers correspond with the questions put, when he has had time for deliberation. To some extent he can combine numbers—can tell a one, three and five dollar bill. His excuses have shown that reason has been in operation, and rightly exercised. As to the reason he gives that he could get pay by revenge, it is an insane what? Or an absurd what? It is either an insane delusion or an absurd reason; and to my mind it is only an absurd reason, and my reason for that opinion, is that no sane man can get up any thing but an absurd reason for murder. He misjudged in reference to a true fact—that the whole people imprisoned him; but we are all liable to misjudge from false facts. It has not the character of an insane delusion; it is not founded on fancies or imaginations. It is, in my opinion, but an absurd conclusion of a sane mind.

Having now established, affirmatively, that all the faculties of the mind are healthful, I will proceed to notice the facts showing the same thing negatively. In the books, we have mania, monomania and dementia. The question here has been narrowed down to monomania or dementia. The negative proofs that dementia does not exist, are that the prisoner attends, comprehends, and, within the compass of his mind, reasons coherently. If monomania existed, he should have the symptoms. Monomania is characterized by some absurd belief, in fancy or imagination. A man believes his legs are glass. He will sit still for fear of breaking them. The preacher believes himself to have become an apostle, or the Saviour. Those are insane delusions. They contradict the reason and the sense. The monomaniac who has the homicidal propensity, is affected with these symptoms. He believes some unjust necessity requires him to kill his fellow—his father or his mother, perhaps, or his children—to keep one from starving, or to make angels of another. In lucid intervals these temptings are disclosed, and friends are begged to avert the catastrophe; and generally that is done before committing the act, but this is by no means uniform. How then can we distinguish between an impulse of moral depravity and the impulse of insanity? The best authorities say that homicidal insanity is always followed by furious madness, or by suicide. But there are exceptions. Other facts have to come in; but homicide is almost always succeeded by general mania—furious insanity. The sane guilty generally make arrangements as to the instruments, time, place and manner of escape. The insane guilty do not. It is true that they frequently do, but their movements are a good deal more hurried, more rapid than those of the sane. They are impulsive. They become impulsive because the imagination goes the cross road, and not around, by reason and judgment.

In the case at bar, the facts show that the prisoner was in a hurry, at the very moment of starting for the murder. That looks something like an insane impulse; yet he was deliberate—he enquired if there were chores to be done, before he left, and put some snow in the tub. This deliberation balances the insane impulse, for both do not go together. Again, conceal-

ment of intention is the leading symptom of the sane criminal; and disclosure of intention, is a leading symptom of the insane. By the confessions, he concealed his instruments—threw one out of the window—passing by the sleigh he had it under his clothes—he concealed various other movements in the construction of his knives—and then fled amongst strangers. Sane criminals generally conceal, until they become convinced that they cannot escape the penalty. The prisoner confessed after he was apprehended—yet at first denied the murder. But when confronted with Mr. Van Arsdale, in a manner that would convince any sane man that he could not escape, he confessed the murder. He has made the same confession to me and to other witnesses. Does not this look like the sanity of crime. If he had been affected with homicidal insanity, we should reasonably expect to find him affected with furious madness. But he has each time conveyed the same train of thought, and almost always used the same words. That does not happen in cases of impulsive insanity, for there is more or less incoherence, want of memory or want of comprehension there, which have not been exhibited to any appreciable extent in the prisoner, either in the testimony of witnesses or in the examinations made by me. I can no longer doubt that the prisoner is sane. He has a low order of rational, uneducated mind. I have bestowed great labor in this investigation; and in view of all the facts bearing on the case, I entertain no reasonable doubt that the prisoner is NOT INSANE.

Q. Doctor, what attention have you paid to the subject of insanity?

A. I have studied and taught it to my class in the Medical College, for several years. I have now surrendered that department to Dr. Coventry. I have, however, during my whole professional life, given more or less attention to the subject of insanity.

Q. In your opinion, which is the safest criterion for judging of the insanity or sanity of the prisoner—his acts previous to the murder, or his conversations since?

A. All should be taken together. Those occurring previously would be the most certain, because the prisoner may seek to deceive us, since the commission of the act.

Q. Is not all the testimony derived from his statements since the murder, founded on the supposition that those statements were true?

A. I have gone upon the assumption that he intended to speak the truth, but I have not relied so much upon that, as the manner of his statements.

Q. Can you conceive of a case of insanity where no external signs of disease, in mind or body, are discoverable?

A. No, Sir. I cannot conceive of any case where a disease of mind or body is not manifested by some external symptoms.

Q. Do you find any evidence in this case, showing any attempts to reason the prisoner out of this idea about pay?

A. I do not. The justice, I believe, told him that he could not get pay?

Q. Do you infer from the evidence, that this man ever thought that Van Nest said, "If you eat my liver, I'll eat yours?"

A. That is an expression of the ancients. If Van Nest spoke to him, he might have heard that. I don't think the prisoner has imagination enough to conceive it.

Q. One of the witnesses observed that the prisoner said, that he thought he should go to heaven, because he was good. What is your idea about that?

A. I don't think his faculty relating to divine things, his conscience, has been much cultivated.

Q. If restlessness is indicative of homicidal mania, does it not immediately precede the offence?

A. It does, and follows, also. It is one of the most characteristic symptoms.

Q. Have you ever visited the institutions for the insane, in England?

A. I have visited the asylums in London and Paris.

Q. Is there any thing in the circumstances of this case, that precludes the idea of going to the house of Van Nest after plunder?

A. Nothing, independent of his own declarations.

Q. If he had homicidal monomania, and he knew that Van Nest had nothing to do with his imprisonment, is it not irreconcilable that he did not attempt to kill the first man he met, instead of going to, and lying in wait about the house?

A. I should not regard it as an impossibility. A man acting under an insane delusion would be likely to attack the first man he met.

Q. In your judgment, would it not be indispensable in this case, in order to show an insane delusion, that the prisoner had an insane impulse to kill that family?

A. It would not lead to that house at all. Insane men generally don't deliberate—they don't generally plan. There are exceptions, however.

Q. Do you see any thing in the prisoner's reading and counting, that is inexplicable?

A. In that I see nothing inexplicable at all. In that I see no particular indications of insanity—no fancies or insane delusions. Of his reading, the facts all show that he never learned to read. He never had any more instruction than a child, and when that instruction was left off, his life was an oblivion. Whilst under the influence of hope and fear, he was, soon after the murder, set to reading. An uneducated mind wouldn't make a very nice distinction between letters, words and thoughts. He would have no just conception of reading, any more than the blind would have of sight. A man fell head first from the scaffold, producing concussion of the brain. Recovering from that, he was unable to speak. By accident, one day, the Bible was handed to him, and he read right off. The Bible taken away, it was some time before he could speak. In the prisoner's case, the faculty of association called up his reading.

Q. Is there any thing in the personal appearance of this prisoner indicating insanity?

A. His smile at first induced me to believe him insane. But I have seen other people who were addicted to that singular habit. I have investigated the matter thoroughly, and have come to the conclusion that there is nothing in his personal appearance that necessarily indicates insanity.

Cross Examination.—Q. Was the loss of speech a physical or mental affection?

A. Both. The brain was injured and the mind impaired.

Q. In that case was the mind sound or impaired?

A. It was impaired, yet the person was not insane.

Q. Do you find that any such accident to the prisoner produced the oblivious condition?

A. The facts show it negatively. I find no particular physical calamity which has changed him.

Q. Who were the ancient people who were accustomed to eat the liver?

A. My recollection does not serve me upon that point. I think I noticed it in the history of Rome; it may be Livy, Maver or Goldsmith.

Q. Did they eat the liver in its raw state, or after the process of cooking?

A. My recollection is quite vague on that point.

Q. Do you think the prisoner has read Livy, Maver or Goldsmith?

A. I rather think he has heard the expression used, but I don't think he ever read those works.

Q. You say you find all his mental faculties sane?

A. I see nothing but the result of moral depravity.

Q. What are your essential faculties, that make up the judgment?

A. Conception, sensation, imagination and association, are essential faculties of the mind, as I have classified them.

Q. What are the faculties that are deranged in insanity?

A. The voluntary faculties are generally affected.

Q. Is sensation entirely obliterated or only impaired, in the insane?

A. It is generally impaired, but not obliterated.

Q. What evidence do you find that sensation in the prisoner is in regular operation?

A. That he sees well, hears, and manifests sensation in various ways.

Q. Do you pronounce every man who sees well and hears, sane, or do you only say that seeing and hearing is an indication of sanity?

A. I say that seeing and hearing, so far as they go, are indications of sanity.

Q. Do you know of a lunatic who does not see as well as the prisoner?

A. Lunatics generally see as well as the prisoner.

Q. Do you not know a vast number of lunatics who have no illusions of sight?

A. In the chronic forms of insanity, the illusion or hallucination would

be affected by eye sight, yet they are a more particular symptom of acute insanity.

Q. Is sensation delicate in the prisoner?

A. His hearing is rather obtuse; the other senses are natural. I know of nothing, except a taste for ardent spirits, showing that organ vitiated. It, however, is not impaired, nor is his smell. I see no impairment of his sensation.

Q. How in regard to the uneasiness of pain?

A. The witness Fuller said the prisoner wanted a doctor; I don't think him a stoic. His not complaining did not show that he did not feel pain.

Q. Do you not find in the prisoner, either great insensibility to pain or an absence of symptoms?

A. Undoubtedly. Any man can so control himself as not to betray the pain he feels. I do not infer from this, however, that he is a brute, for brutes manifest pain.

Q. What manifestations of the power of conception do you find?

A. In calling up the conception of his boyhood, by the power of memory, and of occurrences in the prison.

Q. Can you refer me to any case of mania, in which there was a more feeble power of conception?

A. I don't know. Conception is generally quick in maniacs, but not in demented persons.

Q. Did you ever know a maniac or demented person who manifested less imagination?

A. I cannot call up any particular case.

Q. Is not his surprisingly low and feeble?

A. It is not below that of many sane men. Like many of his other faculties, it is dull, as it is apt to be in uneducated men.

Q. Do you know of any instance where he has exercised any imagination at all?

A. I have stated about the ancient custom of liver eating, and the incidents of his boyhood.

Q. Did he add or color by the imagination?

A. I cannot analyze the work of imagination, but a man cannot relate any occurrence without imagination.

Q. Wherein has he shown one work of imagination?

A. In what he told about his boyhood, and about the prison.

Q. Did you ever know an insane man who had less imagination than the prisoner?

A. I can only say, that they generally have more.

Q. Is weakness of imagination the evidence of insanity, with you?

A. It is one of the evidences.

Q. Do you suppose there is a centre of sensation in the body?

A. I suppose there is. But on my table it is only hypothetical.

Q. Where do you find the evidences of this distribution of the mind into these various faculties?

A. The evidence is found in our own consciousness that those faculties exist. There are thirty-six in all.

Q. What is the little brain?

A. The little brain lies in the back part of the head.

Q. Suppose a thought to start here, at justice, what is its course?

A. Conscience and will are avoided in the thoughts of the insane. [Here the chart is explained to the jury.] An insane man does not exercise conscience or will.

Q. If, whilst passing through an insane hospital, an insane man should knock you down, would he exercise the will?

A. It would be an irregular or involuntary exercise of it.

Q. Is not the will always exercised involuntarily, when not under the influence of reason?

A. There is always a distinction to be observed between volition and will. One is the influence of muscular action, the other is not; yet we can hardly separate them. Faculties of the mind cannot be described like material things. In sleep, except in somnambulism, the mind has no power over the body.

Q. What is waking somnambulism?

A. It is a figurative expression for feigned somnambulism.

Q. If a man forty-three years old should be asked his age, and he should answer twenty-six, should you regard that as evidence of sanity or insanity?

A. I should infer neither, from that alone; but if a man of forty-three should say he was twenty-six, I should infer ignorance.

Q. If he were asked whether he had business with two persons, with whom he had business, and should say he did not know them, what would you infer?

A. I should not infer that it was evidence of sanity or insanity.

Q. If he should be asked if he acknowledged the execution of a deed, shown him, and which he had signed, and he should say he did not understand it, would you regard that as evidence of real or feigned insanity?

A. Why, I should think he told the truth.

Q. If he should be told that he had acknowledged it, already, before a notary public, and he should say, "It is possible," how then?

A. It would need to be connected with other facts before I would infer in respect to the question of sanity.

Q. If asked why he tore up a note, and should say, "I don't recollect," what would that be evidence of?

A. It might, in certain cases, when connected with other facts, be some evidence of either insanity or feigned insanity, but taken by itself it would not be evidence of one more than the other.

Q. Suppose he mistook his father for his mother?

A. I should infer that he was insane, or meant to misrepresent.

Q. Suppose the prisoner, when asked to point out the persons who were his keepers in the State Prison, should say, "I don't know," would that be evidence of insanity?

A. There would be no special evidence about it—either of insanity or feigned insanity.

Q. Suppose that when Mr. Lynch asked the prisoner if his (Lynch's) wife had whipped him, he had said, "I don't remember?"

A. The answer would have been rational.

Q. Suppose the prisoner stated that he went by Cato to Schroeppel, when in fact he went by Syracuse?

A. It might be evidence of forgetfulness or deception, but not of insanity.

Q. Suppose when asked who he killed first, who secondly, and so on in order, he said, "I don't know?"

A. The same.

Q. If he had been asked if he bought a knife of the witness Hyatt, and he had said he did not buy it there, what inference would you have drawn from that?

A. That he lied, or might have forgotten.

Q. Did you hear the evidence, that in both the shops where he went for the knives, he was well known by those who worked there?

A. I understood that some were strangers, and that some knew him.

Q. Do you think that your table will aid the jury in coming to a conclusion as to the prisoner's sanity?

A. Whether the jury will profit by it will depend very much upon my success in making it, and upon the fact whether they understand it.

Q. Did you state, as one of the evidences of the prisoner's sanity, that he went among strangers?

A. I don't recollect. I believe he went to the De Puys', who turned him away.

Q. Do you regard that fact as evidence either of sanity or insanity?

A. It would not make much more on one side than upon the other. It might bear a trifle the most on the side of insanity.

Q. What is the best exercise of coherence?

A. It is best exemplified by relating occurrences in order, as they are understood by mankind in general.

Q. If the prisoner had narrated the tragedy in the order in which each act occurred, would not that have manifested coherence?

A. It is manifested in that way to a high degree. That, however, would depend on the man's ability.

Q. If you find a person in whose memory all the facts are stored, and who is yet unable to narrate them without being prompted, is that evidence of an inferior degree of coherence, than if he related without prompting?

A. That would depend on obstinacy or dullness. If he were willing, but did not, it would show obstinacy or dullness.

Q. Can you suppose a man of ordinary intelligence who could not narrate the incidents of this murder?

A. I do not suppose it impossible.

Q. Did you ever see a sane man who could not do it?

A. There is a deal of difficulty in many sane minds in getting up a story as well as the prisoner does.

Q. Do you find evidence of coherence, or memory only, in answering leading questions?

A. I find evidence of both.

Q. Would you expect an insane man to depart from the questions, or to answer them correctly?

A. I should expect him to depart from the questions. In some of the chronic forms of insanity they will go on and tell, at one time, but at another they cannot.

Q. Then, if there had been a departure from the questions, how would you distinguish between an insane man and one feigning insanity?

A. A man feigning insanity would wander. If you spoke of a horse, he would answer of a dog. We must distinguish by a careful examination into the symptoms of each.

Q. Is your plan of thirty-six faculties a perfect subdivision of the mind?

A. I divided the faculties with thirty-six; but the chart is not perfect. It is such an analysis as comports with common names. There are others, but I have not been called upon to make out the additional list.

Q. How many other volitions are there under No. 28, on your map.

A. I don't feel called upon to answer.

Q. As aids of conscience, you say you find the intermediate faculties of joy and sorrow for human weal and woe?

A. I have testified, generally, that the prisoner had feelings of sorrow and of sympathy; but they are at a low ebb. His faculties are all dull, but they are much higher than those of a brute.

Q. Do you recollect your evidence as to his distinguishing right from wrong?

A. I cannot repeat it, but I recollect of stating several facts bearing upon that point.

Q. What idea did you get from the witness to whom he said, "We'll do what's right about it"?

A. It was the expression of a man knowing right from wrong. I see in that nothing inconsistent with the idea of sanity, as he seemed to appreciate right from wrong.

Q. How did the prisoner apply his knowledge?

A. He applied it to the subject upon which they were conversing. I may as well say here, that I think the prisoner has a very dull mind. He don't

get along without uttering an occasional absurdity. He is a bundle of absurdities. The idea advanced by him was not a very bright one, but so far as it went it was no evidence of insanity.

Q. What faculty is the imaginary centre referred to on your map, or what faculty did you describe as such?

A. The imaginary centre of all the faculties is the place where they all combine. I did not describe any faculty as the centre. I said the centre of the whole united by the hand of Omnipotence.

Q. Do you mean to say that the will is not the imaginary centre?

A. I mean that all the faculties of the mind are that imaginary centre.

Q. Which is excited first, the thoughts or will?

A. They are excited simultaneously.

Q. What did you mean, then, by saying that first sensation, then thought, and then the will were excited?

A. Because that is the order, as near as we can get at them.

Q. If a husband is jealous of his wife, with sufficient cause, is that a delusion?

A. Jealousy with a sufficient cause is not a delusion—without a sufficient cause it may be, depending upon circumstances.

Q. Where do you locate conception?

A. It is a mere hypothesis. It is situated in the forepart of the head.

Q. What hospital of the insane did you visit in London, and who had charge of it?

A. I visited the large hospital near Charing Cross, on the south side of the Thames. I don't recollect the superintendent's name.

Q. What kind of a hospital was it, and how many patients did it contain?

A. It was a hospital for the insane. I don't recollect the number of patients that it contained.

Q. How long were you there?

A. I don't recollect of being there more than one day.

Q. What asylum for the insane did you visit in Paris?

A. I visited a large number of hospitals. I stayed there four months.

Q. Can you name any of them?

A. I cannot now.

Q. Which side of the Seine were they?

A. I cannot now tell.

Q. Can you not name one of them?

A. I cannot. They were charity hospitals.

Q. Were there any insane persons in them?

A. There are insane persons in all the hospitals in Paris.

Q. But did you see any insane persons there?

A. I think there were some there.

Q. Did you discover that the insane persons were hungry?

A. I did not discover that they were more so than the citizens of Paris generally.

Q. Did you visit the hospital in Edinburgh?

A. I did, but not the hospital for the insane. I did not visit any hospital for the insane, out of London.

Q. What asylums for the insane, in this country, have you visited?

A. In America I have visited the Hartford, and Utica, and Ohio Asylums. I remember no other.

Q. Have you ever seen a deranged person who provided for, and sustained himself by his labor?

A. I don't now recollect an instance of having seen a man deranged who was a laboring man.

Q. Do you think the prisoner is a provident, prudent person, in his affairs?

A. The story about his board is evidence of economy. His drunkenness is the reverse. I cannot say that I have seen evidence that he is a provident person.

Q. If he had thirty-seven and a half cents only, one week before the murder, and laid out one half of that amount in buying a knife to murder a family with, three cents in mending a jack knife, and six cents for a pound of soap, should you think him a provident person?

A. In that I should not think him especially provident or improvident. There is not, however, in that, the evidence of that extravagant improvidence which we find in the insane.

Q. Has the fact of his greasing his boots the day of the murder any, and if any, what influence on your mind, in reference to his sanity?

A. I don't see any evidence of insanity in that.

Q. What evidence of design or plan of escape do you find in the prisoner, before the murders were committed?

A. I don't remember of any particular fact occurring before the murder, that was evidence of it.

Here the testimony on both sides closed.

Mr. Seward, then addressed the jury in behalf of the prisoner, in substance, as follows:

May it Please the Court,—*Gentlemen of the Jury:*

"Thou shalt not Kill," and, "Whoso sheddeth Man's blood by Man shall his blood be shed," are laws found in the code of that people who, although dispersed and distracted, trace their history to the creation; a history which records that murder was the first of Human Crimes.

The first of these precepts constitutes a tenth part of the Jurisprudence which God saw fit to establish, at an early period, for the government of all mankind, throughout all generations. The latter, of less universal

obligation, is still retained in our system, although other states, as intelligent and refined, as secure and peaceful, have substituted for it the more benign principle that Good shall be returned for Evil. I yield implicit submission to this law, and acknowledge the justice of its penalty, and the duty of courts and juries to give it effect.

In this case, if the Prisoner *be* guilty of Murder, I do not ask remission of punishment. If he be guilty, never was Murderer *more* guilty. He has murdered not only JOHN G. VAN NEST, but his hands are reeking with the blood of other, and numerous, and even more pitiable victims. The slaying of VAN NEST, if a crime at all, was the cowardly crime of assassination. JOHN G. VAN NEST was a just, upright, virtuous man, of middle age, of grave and modest demeanor, distinguished by especial marks of the respect and esteem of his fellow citizens. On his arm leaned a confiding wife, and they supported, on the one side, children to whom they had given being, and, on the other, aged and venerable parents, from whom they had derived existence. The assassination of such a man was an atrocious crime, but the Murderer, with more than savage refinement, immolated on the same altar, in the same hour, a venerable and virtuous matron of more than three-score years, and her daughter, the wife of VAN NEST, mother of an unborn infant. Nor was this all. Providence, which, for its own mysterious purposes, permitted these dreadful crimes, in mercy suffered the same arm to be raised against the sleeping orphan child of the butchered parents, and received it into Heaven. A whole family, just, gentle and pure, were thus, in their own house, in the night time, without any provocation, without one moment's warning, sent by the Murderer to join the Assemby of the Just; and even the laboring man, sojourning within their gates, received the fatal blade into his breast, and survives through the mercy, not of the Murderer, but of GOD.

For William Freeman, as a Murderer, I have no commission to speak. If he had silver and gold accumulated with the frugality of Crœsus, and should pour it all at my feet, I would not stand an hour between him and the Avenger. But for the Innocent, it is my right, my duty to speak. If this sea of blood was *innocently* shed, then it is my duty to stand beside him until his steps lose their hold upon the scaffold.

"Thou shalt not kill," is a commandment addressed not to him alone, but to me, to you, to the Court, and to the whole community. There are no exceptions from that commandment, at least in civil life, save those of self-defence, and capital punishment for crimes, in the due and just administration of the law. There is not only a question, then, whether the Prisoner has shed the blood of his fellow man, but the question, whether we shall unlawfully shed his blood. I should be guilty of Murder if, in my present relation, I saw the executioner waiting for an insane man, and failed to say, or failed to do in his behalf, all that my ability allowed. I think it has been proved of the Prisoner at the bar, that, during all this long and tedious

trial, he has had no sleepless nights, and that even in the day time, when he retires from these halls to his lonely cell, he sinks to rest like a wearied child, on the stone floor, and quietly slumbers till roused by the constable with his staff, to appear again before the Jury. His Counsel enjoy no such repose. Their thoughts by day and their dreams by night are filled with oppressive apprehensions that, through their inability or neglect, he may be condemned.

I am arraigned before you for undue manifestations of zeal and excitement. My answer to all such charges shall be brief. When this cause shall have been committed to you, I shall be happy, indeed, if it shall appear that my only error has been, that I have felt too much, thought too intensely, or acted too faithfully.

If *my* error would thus be criminal, how great would yours be if you should render an unjust verdict! Only four months have elapsed since an outraged People, distrustful of judicial redress, doomed the Prisoner to immediate death. Some of you have confessed that you approved that lawless sentence. All men now rejoice that the Prisoner was saved for this solemn trial. But this trial would be as criminal as that precipitate sentence, if through any wilful fault or prejudice of yours, it should prove but a mockery of justice. If any prejudice of witnesses, or the imagination of Counsel, or any ill-timed jest shall at any time have diverted your attention, or if any prejudgment which you may have brought into the Jury Box, or any cowardly fear of popular opinion shall have operated to cause you to deny to the Prisoner that dispassionate consideration of his case which the laws of God and man exact of you, and if, owing to such an error, this wretched man fall from among the living, what will be your crime? You will have violated the commandment, "Thou shalt not kill." It is not the form or letter of the trial by jury that authorizes you to send your fellow man to his dread account, but it is the spirit that sanctifies that glorious institution; and if, through pride, passion, timidity, weakness, or any cause, you deny the Prisoner one iota of all the defence to which he is entitled by the law of the land, you yourselves, whatever his guilt may be, will have broken the commandment, "Thou shalt do no Murder."

There is not a corrupt or prejudiced witness—there is not a thoughtless or heedless witness, who has testified what was not true in spirit, or what was not wholly true, or who has suppressed any truth, who has not offended against the same injunction.

Nor is the Court itself above the commandment. If these Judges have been influenced by the excitement which has brought this vast assemblage here, and under such influence, or under any other influence, have committed voluntary error, and have denied to the Prisoner or shall hereafter deny to him the benefit of any fact or any principle of law, then this Court will have to answer for the deep transgression, at that bar at which we all shall meet again. When we appear there, none of us can plead that we

were insane and knew not what we did; and by just so much as our ability and knowledge exceed those of this wretch, whom the world regards as a fiend in human shape, will our guilt exceed his, if we be guilty.

I plead not for a Murderer. I have no inducement, no motive to do so. I have addressed my fellow citizens in many various relations, when rewards of wealth and fame awaited me. I have been cheered on other occasions by manifestations of popular approbation and sympathy; and where there was no such encouragement, I had at least the gratitude of him whose cause I defended. But I speak now in the hearing of a people who have prejudged the Prisoner, and condemned me for pleading in his behalf. He is a convict, a pauper, a negro, without intellect, sense, or emotion. My child, with an affectionate smile, disarms my care-worn face of its frown whenever I cross my threshold. The beggar in the street obliges me to give, because he says "God bless you," as I pass. My dog caresses me with fondness if I will but smile on him. My horse recognizes me when I fill his manger. But what reward, what gratitude, what sympathy and affection can I expect here? There the Prisoner sits. Look at him. Look at the assemblage around you. Listen to their ill-suppressed censures and their excited fears, and tell me where among my neighbors or my fellow men, where even in his heart, I can expect to find the sentiment, the thought, not to say of reward or of acknowledgment, but even of recognition. I sat here two weeks during the preliminary trial. I stood here between the Prisoner and the Jury nine hours, and pleaded for the wretch that he was insane and did not even know he was on trial: and when all was done, the Jury thought, at least eleven of them thought, that I had been deceiving them, or was self-deceived. They read signs of intelligence in his idiotic smile, and of cunning and malice in his stolid insensibility. They rendered a verdict that he was sane enough to be tried—a contemptible compromise verdict in a capital case; and then they looked on, with what emotions God and they only know, upon his arraignment. The District Attorney, speaking in his adder ear, bade him rise, and reading to him one indictment, asked him whether he wanted a trial, and the poor fool answered, No. Have you Counsel? No. And they went through the same mockery, the Prisoner giving the same answers, until a third indictment was thundered in his ears, and he stood before the court, silent, motionless, and bewildered. Gentlemen, you may think of this evidence what you please, bring in what verdict you can, but I asseverate before Heaven and you, that, to the best of my knowledge and belief, the Prisoner at the bar does not at this moment know why it is that my shadow falls on you instead of his own.

I speak with all sincerity and earnestness; not because I expect my opinion to have weight, but I would disarm the injurious impression that I am speaking merely as a lawyer speaks for his client. I am not the Prisoner's lawyer. I am indeed a volunteer in his behalf; but Society and Mankind have the deepest interests at stake. I am the lawyer for Society, for Man-

kind, shocked, beyond the power of expression, at the scene I have witnessed here of trying a maniac as a malefactor. In this, almost the first of such causes I have ever seen, the last I hope that I shall ever see, I wish that I could perform my duty with more effect. If I suffered myself to look at the volumes of testimony through which I have to pass, to remember my entire want of preparation, the pressure of time, and my wasted strength and energies, I should despair of acquitting myself as you and all good men will hereafter desire that I should have performed so sacred a duty. But in the cause of humanity we are encouraged to hope for Divine assistance where human powers are weak. As you all know, I provided for my way through these trials, neither gold nor silver in my purse, nor scrip; and when I could not think beforehand what I should say, I remembered that it was said to those who had a beneficent commission, that they should take no thought what they should say when brought before the magistrate, for in that same hour it should be given them what they should say, and it should not be they who should speak, but the spirit of their Father speaking in them.

You have promised, gentlemen, to be impartial. You will find it more difficult than you have supposed. Our minds are liable to be swayed by temporary influences, and above all, by the influences of masses around us. At every stage of this trial, your attention has been diverted, as it will be hereafter, from the only question which it involves, by the eloquence of the Counsel for the People, reminding you of the slaughter of that helpless and innocent family, and of the danger to which society is exposed by relaxing the rigor of the laws. Indignation against crime, and apprehensions of its recurrence, are elements on which public justice relies for the execution of the law. You must indulge that indignation. You cannot dismiss such apprehensions. You will in common with your fellow citizens deplore the destruction of so many precious lives, and sympathize with mourning relations and friends. Such sentiments cannot be censured when operating upon the community at large, but they are deeply to be deplored when they are manifested in the Jury Box.

Then, again, a portion of this issue has been tried, imperfectly tried, unjustly tried, already. A Jury of twelve men, you are told, have already rendered their verdict that the Prisoner is *now* sane. The deference which right minded men yield to the opinions of others, the timidity which weak men feel in dissenting from others, may tempt you to surrender your own independence. I warn you that that verdict is a reed which will pierce you through and through. That Jury was selected without peremptory challenge. Many of the Jurors entered the panel with settled opinions that the Prisoner was not only guilty of the homicide, but sane, and all might have entertained such opinions for all that the Prisoner could do. It was a verdict founded on such evidence as could be hastily collected in a community where it required moral courage to testify for the

accused. Testimony was excluded upon frivolous and unjust pretences. The cause was submitted to the Jury on the Fourth of July, and under circumstances calculated to convey a malicious and unjust spirit into the Jury Box. It was a strange celebration. The dawn of the Day of Independence was not greeted with cannon or bells. No lengthened procession was seen in our streets, nor were the voices of orators heard in our public halls. An intense excitement brought a vast multitude here, complaining of the delay and the expense of what was deemed an unnecessary trial, and demanding the sacrifice of a victim, who had been spared too long already. For hours that assemblage was roused and excited by denunciations of the Prisoner, and ridicule of his deafness, his ignorance, and his imbecility. Before the Jury retired, the Court was informed that they were ready to render the verdict required. One Juror, however, hesitated. The next day was the Sabbath. The Jury were called and the Court remonstrated with the dissentient, and pressed the necessity of a verdict. That Juror gave way at last, and the bell which summoned our citizens to church for the evening service, was the signal for the discharge of the Jury, because they had agreed. Even thus a legal verdict could not be extorted. The eleven Jurors, doubtless under an intimation from the Court, compromised with the twelfth, and a verdict was rendered, not in the language of the law, that the Prisoner was "not insane," but that he was "sufficiently sane, in mind and memory, to distinguish between right and wrong;" a verdict which implied that the Prisoner was at least *partially* insane, was diseased in other faculties beside the memory, and partially diseased in that, and that, although he had mind and memory to distinguish between right and wrong in the abstract, he had not reason and understanding and will to regulate his conduct according to that distinction; in short, a verdict by which the Jury unworthily evaded the question submitted to them, and cast upon the Court a responsibility which it had no right to assume, but which it did nevertheless assume, in violation of the law. That twelfth Juror was afterwards drawn as a Juror in this cause, and was challenged by the Counsel for the People for partiality to the Prisoner, and the challenge was sustained by the Court, because, although he had, as the court say, pronounced by his verdict that the Prisoner was sane, he then declared that he believed the Prisoner insane, and would die in the Jury Box before he would render a verdict that he was sane. Last and chief of all objections to that verdict now, it has been neither pleaded nor proved here, and therefore is not in evidence before you. I trust, then, that you will dismiss to the contempt of mankind that Jury and their verdict, thus equivocating upon Law and Science, Health and Disease, Crime and Innocence.

Again. An inferior standard of intelligence has been set up here as the standard of the Negro race, and a false one as the standard of the Asiatic race. This Prisoner traces a divided lineage. On the paternal side his ancestry is lost among the tiger hunters on the Gold Coast of Africa, while his

mother constitutes a portion of the small remnant of the Narragansett tribe. Hence it is held that the Prisoner's intellect is to be compared with the depreciating standard of the African, and his passions with the violent and ferocious character erroneously imputed to the Aborigines. Indications of manifest derangement, or at least of imbecility, approaching to Idiocy, are, therefore, set aside, on the ground that they harmonize with the legitimate but degraded characteristics of the races from which he is descended. You, gentlemen, have, or ought to have, lifted up your souls above the bondage of prejudices so narrow and so mean as these. The color of the Prisoner's skin, and the form of his features, are not impressed upon the spiritual, immortal mind which works beneath. In spite of human pride, he is still your brother, and mine, in form and color accepted and approved by his Father, and yours, and mine, and bears equally with us the proudest inheritance of our race—the image of our Maker. Hold him then to be a MAN. Exact of him all the responsibilities which should be exacted under like circumstances if he belonged to the Anglo-Saxon race, and make for him all the allowances which, under like circumstances, you would expect for yourselves.

The Prisoner was obliged—no, his Counsel were obliged, by law, to accept the plea of *Not Guilty*, which the Court directed to be entered in his behalf. That plea denies the homicide. If the law had allowed it, we would gladly have admitted all the Murders of which the Prisoner was accused, and have admitted them to be as unprovoked as they were cruel, and have gone directly before you on the only defence upon which we have insisted, or shall insist, or could insist—that he is irresponsible, because he was and is insane.

We labor not only under these difficulties, but under the further embarrassment that the plea of Insanity is universally suspected. It is the last subterfuge of the guilty, and so is too often abused. But however obnoxious to suspicion this defence is, there have been cases where it was true; and when true, it is of all pleas the most perfect and complete defence that can be offered in any human tribunal. Our Savior forgave his Judges because "they knew not what they did." The insane man who has committed a crime, knew not what he did. If this being, dyed with human blood, be *insane*, you and I, and even the children of our affections, are not more guiltless than he.

Is there reason to indulge a suspicion of fraud here? Look at this stupid, senseless fool, almost as inanimate as the clay moulded in the brick-yard, and say, if you dare, that you are afraid of being deceived by him. Look at me. You all know me. Am I a man to engage in a conspiracy to deceive you, and defraud justice? Look on us all, for although I began the defence of this cause alone, thanks to the generosity, to the magnanimity of an enlightened profession, I come out strong in the assistance of Counsel never before attached to me in any relation, but strongly grappled to me now, by these new and endearing ties. Is any one of us a man to be suspected? The testimony is closed. Look through it all. Can suspicion or malice find in it

any ground to accuse us of a plot to set up a false and fabricated defence? I will give you, gentlemen, a key to every case where Insanity has been wrongfully, and yet successfully maintained. Gold, influence, popular favor, popular sympathy, raise that defence, and make it impregnable. But you have never seen a poor, worthless, spiritless, degraded negro like *this*, acquitted wrongfully. I wish this trial may prove that such an one can be acquitted rightfully. The danger lies here. There is not a WHITE man or WHITE woman who would not have been dismissed long since from the perils of such a prosecution, if it had only been proved that the offender was so ignorant and so brutalized as not to understand that the defence of insanity had been interposed.

If he feign, who has trained the idiot to perform this highest and most difficult of all intellectual achievements? Is it I? Shakspeare and Cervantes, only, of all mankind, have conceived and perfected a counterfeit of insanity. Is it I? Why is not the imposition exposed, to my discomfiture and the Prisoner's ruin? Where was it done? Was it in public, here? Was it in secret, in the jail? His deafened ears could not hear me there, unless I were overheard by other prisoners, by jailers, constables, the Sheriff, and a cloud of witnesses. Who has the keys of the jail? Have I? You have had Sheriff, Jailer, and the whole Police upon the stand. Could none of these witnesses reveal our plot? Were there none to watch and report the abuse? When they tell you, or insinuate, gentlemen, that this man has been taught to feign insanity, they discredit themselves, as did the Roman sentinels, who, appointed to guard the sepulchre of our Savior, said, in excuse of the broken seal, that while they slept men came and rolled away the stone.

I advance towards the merits of the cause. The law which it involves will be found in the case of Kleim, tried for murder in 1844, before Judge Edmonds, of the First Circuit, in the city of New York, reported in the Journal of Insanity for January, 1846, at page 261. I read from the report of the Judge's charge:

"He told the Jury that there was no doubt that Kleim had been guilty of the killing imputed to him, and that under circumstances of atrocity and deliberation which were calculated to excite in their minds strong feelings of indignation against him. But they must beware how they permitted such feelings to influence their judgment. They must bear in mind that the object of punishment was not vengeance, but reformation; not to extort from a man an atonement for the life which he cannot give, but by the terror of the example, to deter others from the like offences, and that nothing was so likely to destroy the public confidence in the administration of criminal justice, as the infliction of its pains upon one whom Heaven has already afflicted with the awful malady of Insanity."

These words deserve to be written in letters of gold upon tablets of marble. Their reason and philosophy are apparent. If you send the lunatic to the gal-

lows, society will be shocked by your inhumanity, and the advocates for the abolition of capital punishment will find their most effective argument in the fact that a Jury of the country, through ignorance, or passion, or prejudice, have mistaken a madman for a criminal.

The report of Judge Edmonds' charge proceeds: "It was true that the plea of insanity was sometimes adopted as a cloak for crime, yet it was unfortunately equally true, that many more persons were unjustly convicted, to whom their unquestioned insanity ought to have been an unfailing protection."

This judicial answer to the argument that Jurors are too likely to be swayed by the plea of insanity, is perfect and complete.

Judge Edmonds further charged the Jury, "that it was by no means an easy matter to discover or define the line of demarkation where sanity ended and insanity began," and that it was often "difficult for those most expert in the disease to detect or explain its beginning, extent, or duration;" "that the classifications of the disease were in a great measure arbitrary, and the Jury were not obliged to bring the case of the Prisoner within any one of the classes, because the symptoms of the different kinds were continually mingling with each other."

The application of this rule will render the present case perfectly clear, because it appears from the evidence that the Prisoner is laboring under a combination of *mania* or excited madness, with *dementia* or decay of the mind.

Judge Edmonds furnishes you with a balance to weigh the testimony in the case, in these words:

"It was important that the Jury should understand how much weight was to be given to the opinions of medical witnesses. The opinions of men who had devoted themselves to the study of insanity as a distinct department of medical science, and studied recent improvements and discoveries, especially when to that knowledge they added the experience of personal care of the insane, could never be safely disregarded by Courts and Juries; and on the other hand, the opinions of physicians who had not devoted their particular attention to the disease, were not of any more value than the opinions of common persons."

This charge of Judge Edmonds furnishes a lamp to guide your feet, and throws a blazing light on your path. He acknowledges, in the first place, with distinguished independence for a Judge and a Lawyer, that "the law, in its slow and cautious progress, still lags far behind the advance of true knowledge." "An insane person is one who, at the time of committing the act, labored under such a defect of reason as not to know the nature and quality of the act he was doing, or if he did know it, did not know he was doing what was wrong; and the question is not whether the accused knew the difference between right and wrong *generally*, but whether he knew the difference between right and wrong in regard to the very act with which he is

charged." "If some controlling disease was, in truth, the acting power within him, which he could not resist, or if he had not a sufficient use of his reason to control the passions which prompted him, he is not responsible. But it must be an absolute dispossession of the free and natural agency of the mind. In the glowing but just language of Erskine, it is not necessary that Reason should be hurled from her seat; it is enough that Distraction sits down beside her, holds her trembling in her place, and frightens her from her propriety."

Judge Edmonds proceeded: "And it must be borne in mind that the *moral* as well as *intellectual* faculties may be so disordered by the disease as to deprive the mind of its controlling and directing power.

"In order then to establish a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong; to remember and understand, that if he commit the act, he will be subject to punishment; and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it.

"If, on the other hand, he have not intelligence enough to have a criminal intent and purpose; and if his moral or intellectual powers are either so deficient that he has not sufficient will, conscience, or controlling mental power; or if through the overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent."

The learned Judge recommended to the Jury, "as aids to a just conclusion, to consider the extraordinary and unaccountable alteration in the Prisoner's whole mode of life; the inadequacy between the slightness of the cause and the magnitude of the offence; the recluse and ascetic life which he had led; his invincible repugnance to all intercourse with his fellow creatures; his behavior and conduct at the time the act was done, and subsequently during his confinement; and the stolid indifference which he alone had manifested during the whole progress of a trial upon which his life or death depended."

Kleim was acquitted and sent, according to law, to the State Lunatic Asylum at Utica. The superintendent of the Asylum, in a note to this report, states that Kleim is uniformly mild and pleasant; has not asked a question, or spoken or learned the name of any one; seems very imperfectly to recollect the Murder or the trial; says he was put in prison; does not know what for; and was taken to the Court, but had no trial; that his bodily health is good, but that his mind is nearly gone—quite demented.

You cannot fail, gentlemen of the Jury, to remark the extraordinary similarity between the case of Kleim, as indicated in the charge of Judge Edmonds, and that of the Prisoner at the bar. If I were sure you would receive such a charge, and be guided by it, I might rest here, and defy the eloquence of the Attorney General. The proof of insanity in this case is of

the same nature, and the disease in the same form as in the case of Kleim. The only difference is, that the evidence here is a thousand times more conclusive. But Judge Edmonds does not preside here. Kleim was a white man, Freeman is a Negro. Kleim set fire to a house, to burn only a poor obscure woman and her child. Here the madman destroyed a whole family, rich, powerful, honored, respected and beloved. Kleim was tried in the city of New York; and the community engaged in their multiplied avocations, and heedless of a crime not infrequent there, and occurring in humble life, did not overawe and intimidate the Court, the Jury, or the witnesses. Here a panic has paralyzed humanity. No man or woman feels safe until the maniac shall be extirpated from the face of the earth. Kleim had the sympathies of men and women, willing witnesses, advocates sustained and encouraged by popular favor, and an impartial Jury. Freeman is already condemned by the tribunal of public opinion, and has reluctant and timorous witnesses, Counsel laboring under embarrassments plainly to be seen, and a Jury whose impartiality is yet to be proved.

The might that slumbered in this maniac's arm was exhausted in the paroxysm which impelled him to his dreadful deeds. Yet an excited community, whose terror has not yet culminated, declare, that whether sane or insane, he must be executed, to give safety to your dwellings and theirs. I must needs then tell you the law, which will disarm such cowardly fear. If you acquit the Prisoner, he cannot go at large, but must be committed to jail, to be tried by another Jury, for a second Murder. Your dwellings therefore will be safe. If such a Jury find him sane, he will then be sent to his fearful account, and your dwellings will be safe. If acquitted, he will be remanded to jail, to await a third trial, and your dwellings will be safe. If that Jury convict, he will then be executed, and your dwellings will be safe. If they acquit, he will still be detained, to answer a fourth Murder, and your dwellings will be safe. Whether the fourth Jury acquit or convict, your dwellings will still be safe; for if they convict, he will then be cut off, and if they acquit, he must, according to the law of the land, be sent to the Lunatic Asylum, there to be confined for life. You may not slay him then, for the public security, because the public security does not demand the sacrifice. No security for home or hearth can be obtained by Judicial Murder. God will abandon him, who, through cowardly fear, becomes such a Murderer. *I* also stand for the security of the homes and hearths of my fellow citizens, and have as deep an interest, and as deep a stake as any one of them. *There* are my home and hearth, exposed to every danger that can threaten theirs; but I know that security cannot exist for any, if feeble man undertakes to correct the decrees of Providence.

The Counsel for the People admit in the abstract that insanity excuses crime, but they insist on rules for the regulation of insanity, to which that disease can never conform itself. DR. FOSGATE testified that the Prisoner was insane. He was asked by the Attorney General, "What if the law, nev-

ertheless, hold to be criminal that same state of mind which you pronounce insanity?" He answered with high intelligence and great moral firmness, "The law cannot alter the constitution of man as it was given him by his Maker."

Insanity, such as the Counsel for the People would tolerate, never did and never will exist. They bring its definition from Coke, Blackstone and Hale, and it requires that by reason either of natural infirmity or of disease, the wretched subject shall be unable to count twenty, shall not know his father or mother, and shall have no more reason or thought than a brute beast.

According to the testimony of DR. SPENCER, and the claim of the Attorney General, an individual is not insane if you find any traces or glimmerings of the several faculties of the human mind, or of the more important ones. Dr. SPENCER has found in the Prisoner, memory of his wrongs and sufferings, choice between bread and animal food, hunger to be appeased, thirst to be quenched, love of combat, imperfect knowledge of money, anger and malice. All of Dr. SPENCER'S questions to the accused show, that in looking for insanity, he demands an entire obliteration of all conception, attention, imagination, association, memory, understanding and reason, and every thing else. There never was an idiot so low, never a diseased man so demented.

You might as well expect to find a man born without eyes, ears, nose, mouth, hands and feet, or deprived of them all by disease, and yet surviving, as to find such an idiot, or such a lunatic, as the Counsel for the People would hold irresponsible. The reason is, that the human mind is not capable, while life remains, of such complete obliteration. What is the human mind? It is immaterial, spiritual, immortal; an emanation of the divine intelligence, and if the frame in which it dwells had preserved its just and natural proportions, and perfect adaptation, it would be a pure and heavenly existence. But that frame is marred and disordered in its best estate. The spirit has communication with the world without, and acquires imperfect knowledge only through the half-opened gates of the senses. If, from original defects, or from accidental causes, the structure be such as to cramp or restrain the mind, it becomes or appears to be weak, diseased, vicious and wicked. I know one who was born without sight, without hearing, and without speech, retaining the faculties of feeling and smell. That child was, and would have continued to be an idiot, incapable of receiving or communicating thoughts, feelings, or affections; but tenderness unexampled, and skill and assiduity unparalleled, have opened avenues to the benighted mind of Laura Bridgman, and developed it into a perfect and complete human spirit, consciously allied to all its kindred, and aspiring to Heaven. Such is the mind of every idiot, and of every lunatic, if you can only open the gates, and restore the avenues of the senses; and such is the human soul when

deranged and disordered by disease, imprisoned, confounded, benighted. That disease is insanity.

Doth not the idiot eat? Doth not the idiot drink? Doth not the idiot know his father and his mother? He does all this because he is a man. Doth he not smile and weep? and think you he smiles and weeps for nothing? He smiles and weeps because he is moved by human joys and sorrows, and exercises his reason, however imperfectly. Hath not the idiot anger, rage, revenge? Take from him his food, and he will stamp his feet and throw his chains in your face. Think you he doth this for nothing? He does it all because he is a man, and because, however imperfectly, he exercises his reason. The lunatic does all this, and, if not quite demented, all things else that man, in the highest pride of intellect, does or can do. He only does them in a different way. You may pass laws for his government. Will he conform? Can he conform? What cares he for your laws? He will not even plead; he cannot plead his disease in excuse. You must interpose the plea for him, and if you allow it, he, when redeemed from his mental bondage, will plead for you, when he returns to your Judge and his. If you deny his plea, he goes all the sooner, freed from imperfection, and with energies restored, into the presence of that Judge. You must meet him there, and then, no longer bewildered, stricken and dumb, he will have become as perfect, clear and bright, as those who reviled him in his degradation, and triumphed in his ruin.

And now what is Insanity? Many learned men have defined it for us, but I prefer to convey my idea of it in the simplest manner. Insanity is a disease of the body, and I doubt not of the brain. The world is astonished to find it so. They thought for almost six thousand years, that it was an affection of the mind only. Is it strange that the discovery should have been made so late? You know that it is easier to move a burthen upon two smooth rails on a level surface, than over the rugged ground. It has taken almost six thousand years to learn that. But moralists argue that insanity shall not be admitted as a physical disease, because it would tend to exempt the sufferer from responsibility, and because it would expose society to danger. But who shall know, better than the Almighty, the ways of human safety, and the bounds of human responsibility?

And is it strange that the brain should be diseased? What organ, member, bone, muscle, sinew, vessel or nerve is not subject to disease? What is physical man, but a frail, perishing body, that begins to decay as soon as it begins to exist? What is there of animal existence here on earth, exempt from disease and decay? Nothing. The world is full of disease, and that is the great agent of change, renovation and health.

And what wrong or error can there be in supposing that the mind may be so affected by disease of the body as to relieve man from responsibility? You will answer, it would not be safe. But who has assured you of safety?

Is not the way of life through dangers lurking on every side, and though you escape ten thousand perils, must you not fall at last? Human life is not safe, or intended to be safe, against the elements. Neither is it safe, or intended to be safe, against the moral elements of man's nature. It is not safe against pestilence, or against war, against the thunderbolt of Heaven, or against the blow of the maniac. But comparative safety can be secured, if you will be wise. You can guard against war, if you will cultivate peace. You can guard against the lightning if you will learn the laws of electricity, and raise the protecting rod. You will be safe against the maniac, if you will watch the causes of madness, and remove them. Yet after all there will be danger enough from all these causes, to remind you that on earth you are not immortal.

Although my definition would not perhaps be strictly accurate, I should pronounce Insanity to be a derangement of the mind, character and conduct, resulting from bodily disease. I take this word derangement, because it is one in common every day use. We all understand what is meant when it is said that any thing is ranged or arranged. The houses on a street are ranged, if built upon a straight line. The fences on your farms are ranged. A tower, if justly built, is ranged; that is, it is ranged by the plummet. It rises in a perpendicular range from the earth. A file of men marching in a straight line are in range. "Range yourselves, men," though not exactly artistical, is not an uncommon word of command. Now what do we mean when we use the word "*de*ranged"? Manifestly that a thing is not ranged, is not arranged, is out of range. If the houses on the street be built irregularly, they are deranged. If the fences be inclined to the right or left, they are deranged. If there be an unequal pressure on either side, the tower will lean, that is, it will be deranged. If the file of men become irregular the line is deranged. So if a man be insane. There was a regular line which he was pursuing; not the same line which you or I follow, for all men pursue different lines, and every sane man has his own peculiar path. All these paths are straight, and all are ranged, though all divergent. It is easy enough to discover when the street, the fence, the tower, or the martial procession is deranged. But it is quite another thing to determine when the course of an individual life has become deranged. We deal not then with geometrical or material lines, but with an imaginary line. We have no physical objects for land-marks. We trace the line backward by the light of imperfect and unsatisfactory evidence, which leaves it a matter almost of speculation whether there has been a departure or not. In some cases, indeed, the task is easy. If the fond mother becomes the murderer of her offspring, it is easy to see that she is deranged. If the pious man, whose steps were firm and whose pathway led straight to Heaven, sinks without temptation into criminal debasement, it is easy to see that he is deranged. But in cases where no natural instinct or elevated principle throws its light upon

our research, it is often the most difficult and delicate of all human investigations to determine when a person is deranged.

We have two tests. *First*, to compare the individual after the supposed derangment with himself as he was before. *Second*, to compare his course with those ordinary lines of human life which we expect sane persons, of equal intelligence, and similarly situated, to pursue.

If derangement, which is insanity, mean only what we have assumed, how absurd is it to be looking to detect whether memory, hope, joy, fear, hunger, thirst, reason, understanding, wit, and other faculties remain! So long as life lasts they never cease to abide with man, whether he pursue his straight and natural way, or the crooked and unnatural course of the lunatic. If he be diseased, his faculties will not cease to act. They will only act differently. It is contended here that the prisoner is not deranged because he performed his daily task in the State Prison, and his occasional labor afterwards; because he grinds his knives, fits his weapons, and handles the file, the axe, and the saw, as he was instructed, and as he was wont to do. Now the Lunatic Asylum at Utica has not an idle person in it, except the victims of absolute and incurable dementia, the last and worst stage of all insanity. Lunatics are almost the busiest people in the world. They have their prototypes only in children. One lunatic will make a garden, another drive the plough, another gather flowers. One writes poetry, another essays, another orations. In short, lunatics eat, drink, sleep, work, fear, love, hate, laugh, weep, mourn, die. They do all things that sane men do, but do them in some peculiar way. It is said, however, that this prisoner has hatred and anger, that he has remembered his wrongs, and nursed and cherished revenge; wherefore, he cannot be insane. Cowper, a moralist who had tasted the bitter cup of Insanity, reasoned otherwise:

> "But violence can never longer sleep
> Than Human Passions please. In ev'ry heart
> Are sown the sparks that kindle fiery war;
> Occasion needs but fan them and they blaze,
> The seeds of murder in the breast of man."

Melancholy springs oftenest from recalling and brooding over wrong and suffering. Melancholy is the first stage of madness, and it is only recently that the less accurate name of monomania has been substituted in the place of melancholy. Melancholy is the foster-mother of anger and revenge. Until 1830 our statutory definition of lunatics was in the terms "*disorderly persons, who, if left at large, might endanger the lives of others.*" Our laws now regard them as *merely* disorderly and dangerous, and society acquiesces, unless madness rise so high that the madman slay his imaginary enemy, and then he is pronounced sane.

The Prisoner lived with NATHANIEL LYNCH, at the age of eight or nine,

and labored occasionally for him during the last winter. Lynch visited him in the jail, and asked him if he remembered him, and remembered living with him. The Prisoner answered, Yes. Lynch asked the Prisoner whether he was whipped while there, and by whom, and why. From his answers it appeared that he had been whipped by his mistress for playing truant, and that he climbed a rough board fence in his night clothes and fled to his mother. Upon this evidence, the learned Professor from Geneva College, Dr. SPENCER, builds an argument that the Prisoner has conception, sensation, memory, imagination, and association, and is most competent for the scaffold. Now here are some verses to which I would invite the Doctor's attention:

"Shut up in dreary gloom, like convicts are,
In company of murderers! Oh, wretched fate!
If pity e'er extended through the frame,
Or sympathy's sweet cordial touched the heart,
Pity the wretched maniac who knows no blame,
Absorbed in sorrow, where darkness, poverty, and every curse impart."

Here is evidence not merely of memory and other faculties, but of what we call genius. Yet these verses are a sad effusion of Thomas Lloyd, a man-slaying maniac in Bedlam.

The first question of fact here, gentlemen, as in every case where insanity is gravely insisted upon, is this:

IS THE PRISONER FEIGNING OR COUNTERFEITING INSANITY?

What kind of man is he? A youth of twenty-three, without learning, education, or experience. Dr. SPENCER raises him just above the brute; DR. BIGELOW exalts him no higher; and DR. DIMON thinks that he has intellectual capacity not exceeding that of a child of ten years, with the knowledge of one of two or three. These are the People's witnesses. All the witnesses concur in these estimates of his mind.

Can you conceive of such a creature comprehending such a plot, and standing up in his cell in the jail, hour after hour, day after day, week after week, and month after month, carrying on such a fraud; and all the while pouring freely into the ears of inquisitors curious, inquisitors friendly, and inquisitors hostile, without discrimination or alarm, or apparent hesitation or suspicion, with "child-like simplicity," as our witnesses describe it, and with "entire docility," as it is described by the witnesses for the People, confessions of crime, which, if they fail to be received as evidences of insanity, must constitute an insurmountable barrier to his acquittal?

I am ashamed for men who, without evidence of the Prisoner's dissimulation, and in opposition to the unanimous testimony of all the witnesses, that he is sincere, still think that this poor fool may deceive them. If he could feign, and were feigning, would he not want some counsel, some friend, if not to advise and assist, at least to inform him of the probable success of the fraud? And yet no one of his Counsel or witnesses has ever conversed with

him, but in a crowd of adverse witnesses; and for myself, I have not spoken with him in almost two months, and during the same period have never looked upon him elsewhere than here, in the presence of the Court and the multitude.

Would a sane man hold nothing back? admit every thing? to every body? affect no ignorance? no forgetfulness? no bewilderment? no confusion? no excitement? no delirium?

Dr. Ray, in his Treatise on the Medical Jurisprudence of Insanity, (p. 333,) gives us very different ideas from all this, of those who can feign, and of the manner of counterfeiting:

"A person who has not made the insane a subject of study, cannot simulate madness, so as to deceive a physician well acquainted with the disease. Mr. Haslam declares, that 'to sustain the character of a paroxysm of active insanity, would require a continuity of exertion beyond the power of a sane person.' Dr. Conolly affirms that he can hardly imagine a case which would be proof against an efficient system of observation.

"The grand fault committed by impostors is, that they *overdo* the character they assume.

"The really mad, except in the acute stage of the disease, are, generally speaking, not readily recognized as such by a stranger, and they retain so much of the rational as to require an effort to detect the impairment of their faculties.

"Generally speaking, after the acute stage has passed off, a maniac has no difficulty in remembering his friends and acquaintances, the places he has been accustomed to frequent, names, dates, and events, and the occurrences of his life. The ordinary relations of things are, with some exceptions, as easily and clearly perceived as ever, and his discrimination of character seems to be marked by his usual shrewdness. * * * * A person simulating mania will frequently deny all knowledge of men and things with whom he has always been familiar."

And now, gentlemen, I will give you a proof of the difference between this real science and the empiricism upon which the Counsel for the People rely, in this cause. Jean Pierre was brought before the Court of Assizes in Paris, in 1824, accused of forgery, swindling, and incendiarism. He feigned insanity. A commission of eminent physicians examined him, and detected his imposture by his pretended forgetfulness, and confusion in answering interrogatories concerning his life and history. The most prominent of these questions are set down in the books. (*Ray, p.* 338.) I submitted these questions and answers, with a statement of Jean Pierre's case, to Dr. Spencer, and he, governed by the rules which have controlled him in the present cause, pronounced the impostor's answers to be evidence of insanity, because they showed a decay of memory.

Again, gentlemen, look at the various catechisms in which this Prisoner has been exercised for two months, as a test of his sanity. Would any sane

man have propounded a solitary one of all those questions to any person whom he believed to be of sound mind? Take an instance. On one occasion, Dr. WILLARD, a witness for the People, having exhausted the idiot's store of knowledge and emotion, expressed a wish to discover whether the passion of fear had burned out, and employing Mr. Morgan's voice, addressed the prisoner thus: "Bill, they're going to take you out to kill you. They're going to take you out to kill you, Bill." The poor creature answered nothing. "What do you think of it, Bill?" Answer: "I don't think about it—I don't believe it." "Bill," continues the inquisitor, with louder and more terrific vociferation, "they're going to kill you, and the Doctors want your bones; what do you think of it, Bill?" The Prisoner answers: "I don't think about it—I don't believe it." The Doctor's case was almost complete, but he thought that perhaps the Prisoner's stupidity might arise from inability to understand the question. Therefore, lifting his voice still higher, he continues: "Did you ever see the Doctors have any bones? Did you ever see the Doctors have any bones, Bill?" The fool answers, "I have." "Then where did you see them, Bill?" "In Dr. Pitney's office." And thus, by this dialogue, the sanity of the accused is, in the judgment of Dr. WILLARD, completely established. It is no matter that if the Prisoner had believed the threat, his *belief* would have proved him sane; if he had been terrified, his *fears* would have sent him to the gallows; if he had forgotten the fleshless skeleton he had seen, he would have been convicted of *falsehood*, and of course have been sane. Of such staple as this are all the questions which have been put to the Prisoner by all the witnesses. There is not an interrogatory which any one of you would have put to a child twelve years old.

Does the prisoner feign insanity? One hundred and eight witnesses have been examined, of whom seventy-two appeared on behalf of the People. No one of them has expressed a belief that he was simulating. On the contrary, every witness to whom the inquiry has been addressed, answers that the sincerity of the Prisoner is beyond question.

Mr. JOHN R. HOPKINS says: "I watched him sharply to discover any simulation, but I couldn't. There was no deception. If there had been I should have detected it."

ETHAN A. WARDEN, President of the village of Auburn, with whom the Prisoner had the most extended conversation, says: "I suppose he thought he spoke the truth."

IRA CURTIS, Esq., testifies: "It did occur to me whether the Prisoner, with his appearance of sincerity, was attempting to play off a game of imposture. The thought vanished in a moment. There was too much before me. I have no doubt of his sincerity. I don't believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes, because he would forget what he set about."

Dr. HERMANCE says: "He spoke with so much sincerity."

The Rev. JOHN M. AUSTIN says: "He did not dissemble. I should sup-

pose him the shrewdest man in the world if he did dissemble. I have not the slightest doubt that there was no attempt to dissemble."

The tenor of the testimony of all the witnesses for the Prisoner, learned and unlearned, is the same.

The witnesses for the People, learned and unlearned, concur.

Dr. BIGELOW says: "He has betrayed no suspicion of me. He has manifested entire docility to me."

Dr. SPENCER describes the manner of the witness in giving all his answers, as "entirely frank."

Dr. CLARY concludes the question of sincerity against all doubt. He says: "It seemed to me that he either thought he was reading or that he meant to deceive, and I don't think the latter, for he always seemed to be very frank."

It being thus absolutely settled, gentlemen, that the Prisoner does not simulate insanity, I pass to the second proposition in this defence, which is, that

IT IS PROVED THAT THE PRISONER IS CHANGED.

I shall first ask you to compare him now with himself in the earlier and happier period of his life.

NATHANIEL HERSEY, a witness for the People, a colored man, knew the Prisoner seven years ago, and says: "He was a lively, smart boy, laughed, played, and was good natured; understood as well as any body; could tell a story right off; talked like other folks."

This is the testimony of an associate of the Prisoner at the age of sixteen.

JOHN DE PUY is a brother-in-law of the accused, and has known him more than twelve years. This witness says: "The Prisoner was an active, smart boy, lively as any other you could find, a good boy to work; set him to work any where, and he would do it; sociable and understood himself, and had some learning; could read in the spelling book pretty well; could read off simple reading lessons in the spelling book, smooth and decent."

DAVID WINNER, a colored man, was the friend and companion of the parents of the Prisoner. He says: "When this boy was twelve or thirteen years old, he was a pretty sprightly lad, sensible, very lively. I saw no difference between him and any other boy of sense, at that time."

NATHANIEL LYNCH, a witness for the People, in whose house the Prisoner was an inmate at the age of eight years, says: "He was a lively, playful boy, almost always smiling and laughing, and appeared to be a lively, laughing, playful boy."

DANIEL ANDRUS, a witness for the People, testified that he employed the Prisoner eight years ago, and talked with him then as he would with any other laboring man.

MARY ANN NEWARK has known the Prisoner from childhood, and says: 'He was a lively, smart boy."

Honest ADAM GRAY was a friend of the Prisoner's parents, and says:

"He was a smart boy, was very active; always thought him a pretty cunning kind of a boy."

Dr. BRIGGS knew him twelve years ago, as "a lad of ordinary intelligence for boys of his condition."

ROBERT FREEMAN was a fellow servant with the Prisoner, at the American Hotel, eight years ago, and though he never entered into any argument with the Prisoner to find out his mother-wit, he says: "He was playful betimes, seemed to understand every thing, and very active."

Dr. VAN EPPS knew the Prisoner in his early infancy, and says: "He then appeared as bright and intelligent as children generally are at that age."

THOMAS F. MUNROE, a witness for the People, certainly not partial to the Prisoner, says: "In his youth he was quick and active, and not much different from other black boys."

A. A. VANDERHEYDEN, a witness for the People, represents the Prisoner as "active and intelligent" in his youth.

ARETAS A. SABIN, a witness for the People, knew the Prisoner fifteen or sixteen years ago, and says that he was no more or less playful than other boys, and that he *wept* on entering the State Prison at the age of sixteen.

JEFFERSON WELLINGTON, a hostile witness, testifies that the Prisoner was sociable and talked freely upon general subjects at the age of sixteen.

LEWIS MARKHAM has known the Prisoner from childhood, and declares that "he was a smart boy, pretty active, quick, sprightly, shrewd, attentive and faithful, without any lack of conversational powers."

ETHAN A. WARDEN received the Prisoner into his family fifteen or sixteen years ago, "as a bright boy, and took him for the reason that he was so," and now declares that "he was then a lad of good understanding, and of kind and gentle disposition."

SALLY FREEMAN, the Prisoner's mother, gives this simple account of him: "When he was young, he was a very smart child, before he went to the State Prison. He was always very playful and good natured. About understanding things he was the same as other children."

Finally, DEBORAH DE PUY, who is of the same age with the Prisoner, of the same caste, and moves in the same humble sphere, testifies that she "knew him before he went to the State Prison, in childhood and youth;" that "his manners, action, and mind, were very good—as good as other boys;" that she "associated with him; he was as bright as any body else; he was very cheerful;" she had "been with him to balls and rides; he acted very smart on such occasions;" she "had talked with him often, and never discovered any lack of intelligence."

Such, gentlemen, is a complete picture of the childhood and youth of the Prisoner at the bar. Its truthfulness and fidelity are unquestioned, for all the witnesses on both sides have drawn it for you.

Look on that picture, and then on the one I shall now present, and, since I must speak of a class lowly and despised,

"Let not Ambition mock their useful toil,
Their humble joys and destiny obscure:
Nor Grandeur hear with a disdainful smile
The short and simple annals of the poor."

You have seen that the Prisoner wept, as well he might, when he entered the State Prison at the age of sixteen. It was the last manifestation he has ever given of a rational mind.

ETHAN A. WARDEN says: "I saw the Prisoner in the State Prison. He appeared stupid and different from what he used to be, and from what I expected he would be. I cannot describe the difference, it was so peculiar. I said to him, 'Bill, are you here?' and repeated the question two or three times; at first he did not understand, but at last said, 'Yes.' He appeared changed."

JOHN DE PUY saw the Prisoner in the State Prison at five different times, but was not allowed to speak with him. DE PUY says the Prisoner "was carrying something on his back like a knapsack, and walking back and forth in the yard. He did not appear as he did before he went to Prison. He appeared stupid, took no notice of any thing. He did not know me, and took no notice of me. I saw him at other times when at work and when idle, and then thought there was something the matter with him. I thought he was not in his right mind."

WILLIAM P. SMITH was a foreman in one of the shops in the State Prison during the third year of the Prisoner's confinement there, and had charge of him. He describes him as "passionate, sullen, and stupid." This witness relates that the Prisoner had oiled his shoes neatly and set them upon a wood-pile, that a convict accidentally disturbed the shoes, and that the Prisoner struck the convict with a billet of wood with great violence, for which offence he was punished; that at another time, with as little provocation, he attacked another convict with great fury, for displacing some yarn on a reel. The witness says: "When I sent him on an errand, he required repeated and very particular instructions. I considered his intellect at the time very low indeed. He knew very little, not much more than a brute or beast."

THERON GREEN, who was a keeper in the Prison and had charge of the Prisoner, declares that he "had very little mind, was a half-pay man, was slow, awkward, dull, downcast, and would have frequent freaks of laughing, without any observable cause of laughter." The witness tried to instruct him in his cell on Sundays, but he could learn nothing. Mr. GREEN says: "He was irritable, malicious, and of bad temper; often violated rules, for which I did not punish him, because I thought him irresponsible. I think that he had as much capacity as a brute beast. I don't know as he had more. If more, there was none to spare. I remarked when he left the shop, that he ought not to go at large."

HORACE HOTCHKISS was a teacher in the Sunday School, at the State

Prison, and says that the Prisoner "was dismissed from the School because he could not be taught to read."

Such is the imperfect history of the Prisoner at the bar, while he was shut up from the observation of men, and deprived by the discipline of the State Prison of the use of speech and of the privilege of complaint.

He was discharged from Prison on the twentieth of last September.

ALONZO WOOD, the new Chaplain of the State Prison, visited him in his cell there twice during the last month of his confinement, and asked him questions, which the Prisoner noticed only by inclining his head. The Chaplain expressed a hope to him on the day of his discharge that he might be able to keep out of Prison thereafter, and inquired whether he wanted a Bible. "I understood him to say," says the witness, "that it would be of no use—that he couldn't read." At the Clerk's office he received the usual gratuity of two dollars, for which he was required to sign a voucher. He answered, "I have been in Prison five years unjustly, and ain't going to settle so." The officers, including the Reverend Chaplain, laughed heartily at what they thought gross ignorance.

The Prisoner's faithful brother-in-law, JOHN DE PUY, was waiting in the hall to conduct him homeward. His narrative is simple and affecting. "I sat down," says DE PUY, "on the long chair in the hall. He came out and passed as if he didn't know me. I went up and touched him, and asked him if he knew me, and he kind o'laughed. We came along to Applegate's, where I stopped to assist to raise a new building. He sat down on a pile of boards. He sat there and acted very stupid and dull, and said nothing." They asked me what damned fool I had with me sitting there?

"He didn't know the value of his money. He had received four half dollars, and thought they were quarters. We went to the hatter's for a cap—found one worth half a dollar; he threw down two halves. I handed one back to him and told him to come out. After he came out, he insisted that he had paid only half enough for the cap, and that they would make a fuss about it." All the leisure hours of that day and the next were spent by the Prisoner, according to DE PUY's account, in giving relations of the injustice and cruelty he had suffered in the Prison. He was very deaf, and assigned as the cause of it, that Tyler, one of the keepers in the Prison, had struck him across the ears with a board, and had knocked his hearing off so he couldn't hear, and his hearing had never come back. "I asked him," says the witness, "if they had done any thing for his deafness." He said, "Yes, they put salt in my ear, but it didn't do any good, for my hearing was gone and all knocked off."

Again. The Prisoner told DE PUY that while eating, he had broken his dinner knife in the Prison, and the keepers had threatened to put him back five years for that; and says DE PUY, "he asked me if they could do it." He complained to DE PUY, as we shall have occasion to see hereafter, that

he had been wrongfully imprisoned, and wanted to find the people who had done him such injustice, for the purpose of getting pay from them.

Such was the change which had come over the Prisoner. The bright, lively, social, active youth of sixteen, had become a drivelling, simple fool.

The Prisoner remained with DE PUY some two or three months. He asked for Esquires, to get warrants for the people who put him in the State Prison; at one time said the justices refused to give him warrants; at another time, that "he had got it all fixed," and he wanted DE PUY to go down and see that he got his pay right; at another, said that "he couldn't do nothing with them—they cheated him all the time, and he couldn't live so." He followed DE PUY seven miles, to Skaneateles, and brought him back to Auburn, to help the Prisoner in a dispute with Mr. Conklin, the harness-maker, about sawing some wood, for which he claimed thirty-seven and a half cents, and Conklin refused to pay him more than twenty-five cents. DE PUY, dealing with the Prisoner as Dr. BRIGHAM would, made peace by paying him the difference, and settled in the same way a difference between the Prisoner and Mr. Murfey, the merchant.

The Prisoner's mind was very unsteady during the winter. DE PUY continues: "He did not know half the time what he was doing; he would go up the street, then turn and run violently in the other direction. He never commenced any conversation with any body; never asked a question; smiled without cause; got up out of his bed at night many times, some times two or three times in the same night, and on such occasions would sing irregularly, dance and spar, as if with a combatant; saying sometimes: 'By God! I'll see you out;' sometimes he would take a book and mumble words as if reading, but there was no sense in the words. When asked afterwards what he got up nights for, he answered that he didn't know." The Prisoner never talked with any body after coming out of Prison unless to answer, in the simplest way, questions put to him.

Many persons remember the Negro, with his saw, deaf, sad and sullen, seeking occupation about the wood-yards, during the half year of his enlargement. Few stopped to converse with him, but the reports of all confirm what has been testified by DE PUY. Those who knew the Prisoner at all, were chiefly persons of his own caste.

MARY ANN NEWARK says that she saw him after he came out of Prison, and he resided with her several days before the homicide. He did not recognize her in the street. "He sat still and silent when in the house, asked no questions, and answered quick and short-like. His manner of acting was queer-like; he never mentioned any name or spoke of any body."

NATHANIEL HERSEY, the Prisoner's old friend, found him changed, had to speak loud to him, "he appeared to be quite stupid." HERSEY asked him what ailed him; "he said he was deaf, that they rapped him over the head at the Prison."

ROBERT FREEMAN discovered that he appeared downcast when he first came out of Prison. He spoke to the Prisoner, who took no notice. Robert took hold of his hand and asked him how he did. The witness says "he appeared more dull and downcast, and I could not tell what the matter was; could never establish any communication with him."

Old ADAM GRAY, who knew him as a "pretty cunning kind of a boy," testifies: "I think there is a change in him. It doesn't seem to me that he knows as much as he did before he went to Prison. He doesn't seem to talk as much, to have so much life, nor does he seem so sensible. Last winter he boarded with me two months. He would get up nights, take his saw and go out as if he was going to work, and come back again and go to bed. On such occasions he would try to sing, but I couldn't understand what he said. He made a noise appearing as if he was dancing."

Some three weeks before the homicide, the Prisoner was boarding at Laura Willard's. The truthful and simple-minded DAVID WINNER, seems to have been led by Providence to visit the house at that time. He says, "I saw him first at his uncle Luke Freeman's. He then appeared to be a *foolish* man. I asked if that was Sally's son. I did not know him. They told me it was. I said, he is very much altered. They said, he has just come out of State Prison. He had altered very much in his looks and behavior. He was sitting down in a chair in the corner, snivelling, snickering and laughing, and having a kind of simple look. I spoke to him; he didn't speak; I saw nothing for him to laugh at. I staid three days and three nights at Laura Willard's, and slept with William in the same bed. At night he got up and talked to himself; I couldn't understand what he said. He appeared to be foolish. I gave him a dollar to go down to Bartlett's to get a quarter of a pound of tea and two pounds of sugar, and to the market and get a beef steak. He went to market and got it all in a beef steak. He got a dollar's worth of beef steak. When I asked what that was for, he said nothing, but laughed at me. He got up nights two or three times, and I felt cold and told Laura I wouldn't sleep with him any more, and I went and slept in the other room. I got afraid of him, and I wouldn't sleep with him any more. He sung when he got up nights, but you couldn't understand what he sung. There was no meaning in what he sung."

DEBORAH DE PUY says, "After he came out of Prison, there was a change. If I talked to him very loud he would talk; say very little only to answer me. He didn't act cheerful, but very stupid; never said any thing until I talked to him. He never talked to me as he did before he went to Prison. He had a strange smile. He would laugh very hearty without any thing to laugh at. He wouldn't know what he was laughing at. He would knock at the door, and I would let him in, and he would sit down and laugh. I would ask what he was laughing at; he said, he didn't know. When I asked questions, he would either answer yes, or no, or don't know. I asked

him how his hearing was hurt. He said they struck him on the head with a board and it seemed as if the sound went down his throat. I have asked him why he was so stupid. I don't think he is in his right mind now, nor that he has been since he came out. The reason is that he never used to act so silly, and sit and laugh so, before he went to Prison."

His mother, SALLY FREEMAN, describes the change which had come over her child, in language simple and touching: "I never knew he was foolish or dumpish before he went to Prison. After he came out of Prison, he didn't act like the same child. He was changed, and didn't appear to know any thing. As to being lively after he came out, I didn't see any cheerfulness about him. He was either sitting or standing when I afterwards saw him, and when I asked him a question he would answer, but that is all he would say. He appeared very dull. He never asked me any questions after he came out, only the first time he saw me he asked me if I was well. From that time to this he has never asked me a question at all. He didn't come to see me more than half a dozen times. When he came, perhaps he would ask me how I did, and then sit down and laugh. What he laughed at was more than I could tell. He laughed as he does now. There was no reason why he should laugh. He was laughing to himself. He didn't speak of any thing when he laughed. I never inquired what he laughed at. I didn't think he was hardly right, and he was so deaf I didn't want to. I asked him how he got deaf, and he told me his ear had fell down, or some such foolish answer he gave me. He would stay an hour or so. He generally sat still. I went to see him in the Jail after he killed the VAN NEST family, on the first day of the trial. He laughed when I went in, and said he was well. I talked to him. I asked him if he knew what he had been doing. He stood and laughed. I asked him how he came there. He didn't say much of any thing, but stood and laughed. When I went away he didn't bid me good-bye nor ask me to come again. I have never been to see him since, and have never received any message from him of any kind since he has been in Jail. I don't know that he noticed me when I was on examination before. I don't think he is in his right mind, or that he has been since he came out of Prison. The reason is that he acts very foolish, and don't seem as though he had any senses."

You will remember that we have seen the Prisoner a smart, bright, lively, cheerful, and playful youth, attending DEBORAH DE PUY at balls, parties, and rides; for Negroes enjoy such festivities as much and even more than white men. Deborah says he no longer attends. But from the testimony of JOHN DE PUY we find him at a dance in the house of Laura Willard, on the night before the slaughter of the VAN NEST family. The scene was the same as before. There was music, and gallantry, and revelry, and merriment, and laughing, and dancing. But while all others were thus occupied, where was the Prisoner, and how was he engaged? He was leaning against

the wall, sullen, gloomy, silent, morose; pressing with his hand the knife concealed in his bosom, and waiting his opportunity to strike to the heart his brother-in-law and benefactor.

This is the change which had come over the Prisoner when he emerged from the State Prison, as observed by the few of his kindred and caste, who had known him intimately before. How many white men who knew him in his better days, have we heard confirm this testimony, by saying that they lost sight of him when he went to Prison; that they met him in the street afterwards, downcast and sullen, with his saw in his hand, seeking casual occupation; that they spoke to him but he did not hear or did not answer, and they passed on! Only two or three such persons stopped to enquire concerning his misfortunes, or to sympathise with him.

William P. Smith says: "The first time I saw him after he came out of Prison, was in November. I asked him how he did. He made no answer. A little black boy with him told me he was deaf. I spoke to him to try and induce conversation, and finally gave it up; I couldn't make him understand. He appeared different from what I had known him before; appeared dumpish; didn't say much, and seemed to stand around. I met him once or twice in the street—merely met him—he noticed nothing."

Doctor Hermance did not know him before he went to Prison. His peculiarities attracted the Doctor's attention, and he enquired the cause. The Prisoner answered that he had been five years in the State Prison, and he wasn't guilty, and they wouldn't pay him. The Doctor says: "I discovered that he was very deaf, and inquired the cause of his deafness. He stated that his ears dropped. I thought his manners very singular and strange; and what he said about pay very singular and strange. He spoke in a very gloomy, despondent state of mind. There appeared to be a sincerity in his manner. The tone of his voice was a dull and monotonous tone. I thought at the time that he was deranged."

To complete this demonstration of the change, I have only to give you the character of the Negro now, as he is described by several of the witnesses, as well on the part of the People as of the Prisoner, who have seen him in Prison, and as he is admitted to be.

Warren T. Worden, Esq., an astute and experienced member of the bar, visited him in his cell in the Jail, and says: "I formed an opinion then, that he knew nothing, and I expressed it. I do not believe him sane. I don't believe he understands what is going on around him. He would laugh upon the gallows as readily and as freely as he did in his cell. He would probably know as much as a dumb beast who was taken to the slaughter house, as to what was to be done with him. If that state of mind and knowledge constitutes insanity, then he is insane."

Doctor Fosgate, one of the soundest and most enlightened men in our community, who was his physician in the Jail, and dressed his wounded hand, describes him as "insensible to pain, ignorant of his condition, and of

course indifferent to his fate; grinning constantly idiotic smiles, without any perceptible cause, and rapidly sinking into idiocy."

IRA CURTIS, who knew him in his youth, and has now carefully examined him in the Jail, says: "He is incapable of understanding; he is part fool, bordering on idiocy; crazy and idiot both, and crazy and insane both. If all the Doctors in the world should say he was not a fool, I shouldn't believe them."

Doctor BRIGGS, who, it will be recollected, knew him at the age of eight or nine, examined him in the Jail, and says: "My opinion is and was, that he has less mind than when I knew him before—that his mind has become impaired."

WILLIAM P. SMITH, who knew him before he went to the State Prison and while there, patiently examined him in the Jail, and says: "There was a change, a sensible change in the man. He didn't appear to know as much, to have as many ideas about him, as many looks of intelligence. I don't know as I could describe it very well. There was a slowness, a dullness; I thought what little intellect he had seemed to sink lower down, from some cause or other. His physical strength and vigor were good in the Prison. He appeared active, strong and energetic. Now, his manner appears more dull, stupid and inattentive."

Dr. VAN EPPS says: "*Now* he appears to have the intellect of a child five years old."

ETHAN A. WARDEN, the Prisoner's earliest and fastest friend, says: "I look at him now and when he lived with me. He appears different. I could not get any thing that appeared like sorrow for what he had done, or feeling for the crime. I don't think him much above a brute."

JOHN R. HOPKINS says: "I think him in intelligence but little above the brute."

I need not pursue the parallel further. There is no dispute as to his present ignorance and debasement.

Dr. DIMON, a witness for the People, although he pronounces the Prisoner sane, says he should think "he has not as much intellect as a child of fourteen years of age; is in some respects hardly equal to a child of three or four," and in regard to knowledge compares him with "a child two or three years old, who knows his A, B, C, and can't count twenty-eight."

Dr. BIGELOW, a leading witness for the People, declares: "I believe him to be a dull, stupid, moody, morose, depraved, degraded negro, but not insane;" and Dr. SPENCER, swearing to the same conclusion, says: "He is but little above the brute, yet not insane."

I submit to you, gentlemen of the Jury, that by comparing the Prisoner with himself, as he was in his earlier, and as he is in his later history, I have proved to you conclusively that he is visibly changed and altered in mind, manner, conversation and action, and that all his faculties have become disturbed, impaired, degraded and debased. I submit also, that it is proved,

First, that this change occurred between the sixteenth and the eighteenth years of his life, in the State Prison, and that therefore the change, thus palpable, was not, as the Attorney General contends, effected by mere lapse of time and increase of years, nor by the natural development of latent dispositions; *Secondly*, that inasmuch as the convicts in the State Prison are absolutely abstemious from intoxicating drinks, the change was not, as the Attorney General supposes, produced by intemperance.

I have thus arrived at the *third* proposition in this case, which is, that

THE PRISONER AT THE BAR IS INSANE.

This I shall demonstrate, *First*, by the fact already so fully established, that the Prisoner is changed; *Secondly*, by referring to the predisposing causes which might be expected to produce Insanity; *Thirdly*, by the incoherence and extravagance of the Prisoner's conduct and conversation, and the delusions under which he has labored.

And now as to predisposing causes. The Prisoner was born in this village, twenty-three years ago, of parents recently emerged from slavery. His mother was a woman of violent passions, severe discipline, and addicted to intemperance. His father died of *delirium tremens*, leaving his children to the neglect of the world, from which he had learned nothing but its vices.

Hereditary insanity was added to the Prisoner's misfortunes, already sufficiently complicated. His aunt, Jane Brown, died a lunatic. His uncle, Sidney Freeman, is an acknowledged lunatic.

All writers agree, what it needs not writers to teach, that *neglect of education* is a fruitful cause of Crime. If neglect of education produces crime, it equally produces Insanity. Here was a bright, cheerful, happy child, destined to become a member of the social state, entitled by the principles of our Government to equal advantages for perfecting himself in intelligence, and even in political rights, with each of the three millions of our citizens, and blessed by our religion with equal hopes. Without his being taught to read, his mother, who lives by menial service, sends him forth at the age of eight or nine years to like employment. Reproaches are cast on his mother, on Mr. Warden, and on Mr. Lynch, for not sending him to school, but these reproaches are all unjust. How could she, poor degraded Negress and Indian as she was, send her child to school? And where was the school to which Warden and Lynch should have sent him? There was no school for him. His few and wretched years date back to the beginning of my acquaintance here, and during all that time, with unimportant exceptions, there has been no school here for children of his caste. A school for colored children was never established here, and all the common schools were closed against them. Money would always procure instruction for my children, and relieve me from the responsibility. But the colored children, who have from time to time been confided to my charge, have been cast upon my own care for education. When I sent them to school with my own children, they were sent back to me with a message that they must be withdrawn, because

they were black, or the school would cease. Here are the fruits of this unmanly and criminal prejudice. A whole family is cut off in the midst of usefulness and honors by the hand of an assassin. You may avenge the crime, but whether the Prisoner be insane or criminal, there is a tribunal where this neglect will plead powerfully in his excuse, and trumpet-tongued against the "deep damnation" of his "taking off."

Again. The Prisoner was subjected, in tender years, to severe and undeserved *oppression*. Whipped at Lynch's; severely and unlawfully beaten by Wellington, for the venial offence of forgetting to return a borrowed umbrella; hunted by the Police on charges of petty offences, of which he was proved innocent; finally, convicted, upon constructive and probably perjured evidence, of a crime, of which it is now universally admitted he was guiltless, he was plunged into the State Prison at the age of sixteen, instead of being committed to a House of Refuge.

Mere *imprisonment* is often a cause of Insanity. Four insane persons have, on this trial, been mentioned as residing among us, all of whom became insane in the State Prison. Authentic statistics show that there are never less than thirty insane persons in each of our two great penitentiaries. In the State Prison the Prisoner was subjected to severe corporeal punishment, by keepers who mistook a decay of mind and morbid melancholy, for idleness, obstinacy and malice. Beaten, as he was, until the organs of his hearing ceased to perform their functions, who shall say that other and more important organs connected with the action of his mind, did not become diseased through sympathy? Such a life, so filled with neglect, injustice and severity, with anxiety, pain, disappointment, solicitude and grief, would have its fitting conclusion in a mad-house. If it be true, as the wisest of inspired writers hath said, "Verily oppression maketh a wise man mad," what may we not expect it to do with a foolish, ignorant, illiterate man! Thus it is explained why, when he came out of Prison, he was so dull, stupid, morose; excited to anger by petty troubles, small in our view, but mountains in his way; filled in his waking hours with moody recollections, and rising at midnight to sing incoherent songs, dance without music, read unintelligible jargon, and combat with imaginary enemies.

How otherwise than on the score of madness can you explain the stupidity which caused him to be taken for a fool at Applegate's, on his way from the Prison to his home? How else, the ignorance which made him incapable of distinguishing the coin which he offered at the hatter's shop? How else, his ludicrous apprehensions of being re-committed to the State Prison for five years, for the offence of breaking his dinner knife? How else, his odd and strange manner of accounting for his deafness, by expressions, all absurd and senseless, and varying with each interrogator: as to JOHN DE PUY, "that Tyler struck him across the ears with a plank, and knocked his hearing off, and that it never came back; that they put salt in his ear, but it didn't do any good, for his hearing was gone—all knocked off;" to the Rev.

JOHN M. AUSTIN, "the stones dropped down my ears, or the stones of my ears dropped down;" to ETHAN A. WARDEN, "got stone in my ear; got it out; thought I heard better when I got it out;" to Dr. HERMANCE, "that his ears dropped;" and to the same witness on another occasion, "that the hearing of his ears fell down;" to his mother, "that his ear had fell down;" to DEBORAH DE PUY, "that Tyler struck him on the head with a board, and it seemed as if the sound went down his throat;" to Dr. BRIGHAM, "that he was hurt when young, it made him deaf in the right ear;" also, "that in the Prison he was struck with a board by a man, which made him deaf;" and also, "that a stone was knocked into, or out of his ear"?

It is now perfectly certain, from the testimony of Mr. VAN ARSDALE and HELEN HOLMES, that the Prisoner first stabbed Mrs. VAN NEST, in the back yard, and then entered the house and stabbed Mr. VAN NEST, who fell lifeless at the instant of the blow. And yet, sincerely trying to give an account of the dreadful scenes, exactly as they passed, the Prisoner has invariably stated, in his answers to every witness, that he entered the house, stabbed VAN NEST, went into the yard, and then, and not before, killed Mrs. VAN NEST. It was in this order that he related the transaction to WARREN T. WORDEN, to JOHN M. AUSTIN, to IRA CURTIS, to ETHAN A. WARDEN, to WILLIAM P. SMITH, to Dr. VAN EPPS, to JAMES H. BOSTWICK, to Dr. BRIGHAM, to NATHANIEL LYNCH, to Dr. WILLARD, to Dr. BIGELOW, and to Dr. SPENCER. How else than on the score of madness can you explain this confusion of memory? and if the Prisoner was sane, and telling a falsehood, what was the motive?

How else than on the score of a demented mind will you explain the fact, that he is without human curiosity; that he has never, since he came out of Prison, learned a fact, or asked a question? He has been visited by hundreds in his cell, by faces become familiar, and by strangers, by fellow prisoners, by Jailers, by Sheriff, by Counsel, by Physician, by friends, by enemies, and by relations, and they unanimously bear witness that he has never asked a question. The oyster, shut up within its limestone walls, is as inquisitive as he.

How else will you explain the mystery that he, who seven years ago had the capacity to relate connectively any narrative, however extended, and however complex in its details, is now unable to continue any relation of the most recent events, without the prompting of perpetual interrogatories, always leading him by known land-marks; and that when under such discipline he answers, he employs generally the easiest forms, "Yes," "No," "Don't know"?

Then mark the confusion of his memory, manifested by contradictory replies to the same question. WARREN T. WORDEN asked him: "Did you go in at the front door? Yes. Did you go in at the back door? Yes. Were you in the hall when your hand was cut? Yes. Was your hand cut at the gate? Yes. Did you stab Mrs. Wyckoff in the hall? Yes. Did

you stab Mrs. Wyckoff at the gate? Yes. Did you go out at the back door? Yes. Did you go out at the front door? Yes."

ETHAN A. WARDEN asked him, "What made you kill the child?" "Don't know any thing about that." At another time he answered, "I don't think about it; I didn't know it was a child." And again, on another occasion, "Thought—feel it more;" and to Dr. BIGELOW, and other witnesses, who put the question, whether he was not sorry he killed the child, he replied, "It did look *hard*—I rather it was bigger." When the ignorance, simplicity and sincerity of the prisoner are admitted, how otherwise than on the ground of insanity, can you explain such inconsistencies as these?

The testimony of VAN ARSDALE and HELEN HOLMES, proves that no words could have passed between the Prisoner and VAN NEST, except these, "What do you want here in the house?" spoken by VAN NEST, before the fatal blow was struck. Yet when inquired of by WARREN T. WORDEN what VAN NEST said to him when he entered the house, the Prisoner said, after being pressed for an answer, that VAN NEST said to him, "If you eat my liver, I'll eat yours:" and he at various times repeated to the witness the same absurd expression. To the Rev. JOHN M. AUSTIN he made the same statement, that VAN NEST said, "If you eat my liver, I'll eat your liver;" to IRA CURTIS the same; to ETHAN A. WARDEN the same; to LANSINGH BRIGGS the same; and the same to almost every other witness. An expression so absurd under the circumstances, could never have been made by the victim. How otherwise can it be explained than as the vagary of a mind shattered and crazed?

The Prosecution, confounded with this evidence, appealed to Dr. SPENCER for relief. He, in the plentitude of his learning, says, that he has read of an ancient and barbarous people, who used to feast upon the livers of their enemies, that the Prisoner has not imagination enough to have invented such an idea, and that he must somewhere have heard the tradition. But when did this demented wretch, who reads "woman" for "admirable," and "cook" for "Thompson," read Livy or Tytler, and in what classical circle has he learned the customs of the ancients? Or, what perhaps is more pertinent, who were that ancient and barbarous People, and who was their Historian?

Consider now the Prisoner's earnest and well-attested sincerity in believing that he could read, when either he never had acquired, or else had lost, the power of reading. The Rev. Mr. AUSTIN visited him in Jail, at an early day, asked him whether he could read, and being answered that he could, gave him a Testament. In frequent visits afterwards, when the Prisoner was asked whether he had read his Testament, he answered, "Yes," and it was not until after the lapse of two months that it was discovered that he was unable to spell a monosyllable.

IRA CURTIS says: "I asked him if he could read; he said, 'Yes,' and commenced reading, that is he pretended to, but he didn't read what was

there. He read, '*Oh! Lord—mercy—Moses*'—and other words mixed up in that way. The words were not in the place where he seemed to be reading, and it was no reading at all, and some words he had over I had never heard before. I took the book from him, saying, 'You don't read right.' He said, 'Yes, I do.' I said, 'William, you can't read.' He said, 'I can.' I gave him a paper, pointed him to the word, 'admirable'—he pronounced it 'woman.' I pointed to the word 'Thompson'—he read it 'cook.' He knew his letters, and called them accurately, but could not combine them. I asked him to count. He commenced and counted from one up to twenty, hesitated there some time, and finally counted up to twenty-eight, and then jumped to eighty. Then I started him at twenty, and he said 'one.' I told him to say 'twenty-one;' but he seemed to have difficulty in saying 'twenty-one.' He tried to go on. He did count up to twenty regularly, by hesitating; but never went higher than twenty-eight correctly. I asked him how much two times four was,—he said 'eighty.' How much two times three was—he said 'sixty or sixty-four.'" Many other witnesses on both sides of this cause, Mr. AUSTIN, Mr. HOPKINS, Mr. HOTCHKISS, Mr. WORDEN, Mr. SMITH, Dr. VAN EPPS, Dr. BRIGHAM, Dr. MC CALL, Dr. COVENTRY, Dr. WILLARD, Dr. BIGELOW, Dr. CLARY and Dr. SPENCER, have with varied ingenuity, sought to detect a fraud in this extreme ignorance and simplicity, and have unanimously testified to you that the simpleton sincerely believes he reads accurately, and as honestly thinks he counts above twenty-eight correctly, while in truth he cannot advance beyond that number in counting, and cannot read at all. Yet he must, at least, have learned in the Sunday School that he could not read, and the keepers of the Prison show that he put up his daily manufacture of rings and of skeins of thread, in quantities accurately counted, to the number of several dozen.

I think you will agree with Doctor HUN, that there is not a sane man twenty-three years of age, brought up in this country, who does not know whether he can read, and who cannot count twenty-nine.

Mark his indifference and stupidity as to his situation. ETHAN A. WARDEN asked him, "Do you expect to be hung? 'Don't think about it.' Do you like to be in Jail? 'Pretty well.' Is it a good place? 'Yes.' Do you sleep well? 'Yes.' Do you think of what you've done? 'No.'"

WILLIAM P. SMITH asked him in the Jail if he knew whether he was in Jail or in the Prison. He hesitated some time, and finally thought he was in the Jail, but wasn't sure. "Do you know what you are confined here for?" "No."

Dr. VAN EPPS asked him what he was put in Jail for. "Don't know." Afterwards he seemed to recollect himself and said, "*horse*."

Dr. BRIGHAM says, "I tried in various ways to ascertain if he knew what he was to be tried for. I tried repeatedly and never could get a distinct answer. It was often 'I don't know,' and sometimes '*a horse*.' I asked him

at one time, what his defence would be. Shall we say that you did not kill? He answered very quickly, looking up, 'No.' But may we not say so? 'No, that would be wrong; I did do it.' Some one asked him when others were there, May we say you are crazy? 'I can't go so far as that.' I asked him if he had employed any body to defend him, and said, Mr. Seward is now here, you had better employ him and tell him what to say. Here is Mr. Seward, ask him. He said, in a reading tone, 'Governor Seward, I want you to defend me,' repeating the words I had told him to use."

When on trial for stealing a horse, six years ago, he had Counsel of his own choice, and was treated and tried as a man who understood and knew his rights, as indeed it is proved that he did. Here his life is at stake. He does not know even the name of a witness for or against him, although his memory recalls the names of those who testified against him on his trial for stealing the horse, and the very effect of their testimony.

Dr. BRIGHAM says, "I asked him what he could prove in his defence. He replied, '*The Jury* can prove that I was in Prison five years for stealing a horse, and didn't steal it.'"

When asked if he is not sorry for crimes so atrocious, he answers always, either, "No," or "Don't know."

On the very day when he was to be arraigned, he had no Counsel; and, as Mr. AUSTIN testifies, was made to understand, with difficulty, enough to repeat like a parrot a consent that I should defend him. The Attorney General says, the Prisoner "knew he was guilty, and that Counsel could do nothing for him. If he was as wise and as intelligent as Bacon himself, he could give no instructions to Counsel that would help him." Aye, but is he as wise and as intelligent as Bacon? No, gentlemen, no man ever heard of a sane Murderer in whose bosom the love of life and the fear of death were alike extinguished.

The accused sat here in Court, and saw Dr. BIGELOW on the stand swearing away his life, upon confessions already taken. Dr. BIGELOW, followed him from the Court to his cell, and there the Prisoner, with child-like meekness, sat down on his bench and confessed further for hours, all the while holding the lamp by whose light Dr. BIGELOW recorded the testimony, obtained for the purpose of sealing his fate beyond a possible deliverance.

He was asked about the Judges here, was ignorant where they sat, and could only remember that there was a good looking man on the elevated stage, which he was told was the bench. He was asked what they say in Court, and he says, "They talk, but I hear nothing;" what or whom they are talking about, and he says, "Don't know;" whom he has seen here, and he recalls not his Judges, the Jury, the witnesses or the Counsel, but only the man who gave him tobacco.

From his answers to Mr. HOPKINS, Mr. AUSTIN, Mr. SMITH, and others,

as well as from the more reliable testimony of his mother, of his brother-in-law, of Mr. LYNCH, Mr. WARDEN, Mr. HOTCHKISS, and others, we learn that in his childhood, and in State Prison, he attended Sunday School and Divine Worship. Yet we find him at the age of twenty-three, after repeated religious instructions, having no other idea of a Supreme Being and of a future state, than that Heaven was a place above, and God was above, but that God was no more than a man or an animal. And when asked by Mr. HOPKINS what he knew about Jesus Christ, he answered that he came to Sunday School in the State Prison. What did he do there? "Don't know." Did he take a class there? "Don't know." Did he preach? "Don't know." Did he talk? "Don't know." The Prisoner gave the same answers to the Rev. Mr. AUSTIN, to Mr. HOTCHKISS, his Sunday School teacher, and to Dr. BRIGHAM.

Mr. HORACE HOTCHKISS says: "I asked him in Jail, if you shall be convicted and executed, what will become of you? He answered, 'Go to Heaven.' I asked him why, and he replied, 'Because I am good.'" Dr. BRIGHAM inquired: "Do you know any thing of Jesus Christ?" "I saw him once." "Did you kill him at VAN NEST'S?" The poor fool (as if laboring with some confused and inexplicable idea) said, "Don't know." I think, gentlemen, that you will agree with Dr. HUN, Dr. BRIGHAM, and the other intelligent witnesses, who say that, in their opinion, there is no sane man of the age of twenty-three, who has been brought up in church-going families, and been sent to Sunday School, whose religious sentiments would, under such circumstances, be so confused and so absurd as these.

To the Rev. Mr. AUSTIN, he said after his arrest, "*if they will let me go this time*, I will try and do better." And well did that witness remark, that such a statement evinced a want of all rational appreciation of the nature and enormity of his acts, for no man twenty-three years old, possessing a sound mind, and guilty of four-fold Murders, could suppose that he would be allowed to escape all punishment by simply promising, like a petulant child, that he would "do better."

Mark his insensibility to corporeal pain and suffering. In the conflict with Mrs. WYKOFF, he received a blow which divided a sinew in his wrist, and penetrated to the bone. The Physicians found him in the Jail with his wound, his legs chained, and heavy irons depending unequally from his knees. Yet he manifested absolute insensibility. Insane men are generally very insensible to pain. The reason is, that the nervous system is diseased, and the senses do not convey to the mind accurate ideas of injuries sustained. Nevertheless, this passes for nothing with Dr. SPENCER, because there was an ancient sect of Philosophers who triumphed, or affected to triumph, over the weakness of our common nature, and because there are modern heroes who die without a groan on the field of battle. But in what school of Philosophy, or in what army, or in what battle-ship was this idiot trained, that he has become insensible to pain, and reckless of death?

I proposed, gentlemen, at the close of the testimony, that you should examine the Prisoner for yourselves. I regret that the offer was rejected. You can obtain only very imperfect knowledge from testimony in which the answers of the Prisoner are given with the freedom and volubility of the interrogators. We often judge more justly from the tone, manner and spirit of those with whom we converse, than from the language they use. All the witnesses agree that the Prisoner's tone and modulation are slow, indistinct, and monotonous. His utterance, in fact, is that of an idiot, but on paper it is as distinct as that of Cicero.

I have thus shown you, gentlemen, the difficulties which attended you in this investigation, the law concerning insanity, the nature and characteristics of that disease, the great change which the Prisoner has undergone, and some of those marked extravagances which denote lunacy. More conclusive evidence yet remains; and *first*, the delusion by which the Prisoner was overpowered, and under whose fearful spell his crimes were committed.

DELUSION does not always attend insanity, but when found, it is the most unequivocal of all proofs. I have already observed that melancholy is the first stage of madness, and long furnished the name for insanity. In the case of Hatfield, who fired at the King in Drury-Lane Theatre, Lord Erskine, his Counsel, demonstrated that insanity did not consist in the absence of any of the intellectual faculties, but in delusion; and that an offender was irresponsible, if his criminal acts were the immediate, unqualified offspring of such delusion. Erskine there defined a *delusion* to consist in deductions from the *immovable* assumption of the matters *as realities*, either without any foundation whatever, or so distorted and disfigured by fancy as to be nearly the same thing as their creation.

The learned men here have given us many illustrations of such delusions; as that of the man who believes that his legs are of glass, and therefore refuses to move, for fear they will break; of the man who fancies himself the King of the French; or of him who confides to you the precious secret, that he is Emperor of the world. These are palpable delusions, but there are others equally, or even more fatal in their effects, which have their foundation in some original fact, and are thus described by Dr. Ray, at page 210 of his work:

"In another class of cases, the exciting cause of homicidal insanity is of a moral nature, operating upon some peculiar physical predisposition, and sometimes followed by more or less physical disturbance. Instead of being urged by a sudden imperious impulse to kill, the subjects of this form of the affection, after suffering for a certain period much gloom of mind and depression of spirits, feel as if bound by a sense of necessity to destroy life, and proceed to the fulfilment of their destiny, with the utmost calmness and deliberation. So reluctant have Courts and Juries usually been to receive the plea of insanity in defence of crime, deliberately planned and executed by a mind in which no derangement of intellect has ever been perceived,

that it is of the greatest importance that the nature of these cases should not be misunderstood."

Our learned witnesses have given us various definitions of a delusion. Dr. HUN'S is perhaps as clear and accurate as any: "It is a cherished opinion opposed by the sense and judgment of all mankind." In simple speech, it is what is called the predominance of ONE IDEA, by which reason is subverted. I shall now show you such a predominance of one idea, as will elucidate the progress of this Maniac from the first disturbance of his mind, to the dreadful catastrophe on the shores of the Owasco Lake. That delusion is a star to guide your judgments to an infallible conclusion, that the Prisoner is insane. If you mistake its course, and consign him to a scaffold, it will rest over his grave, indicating him as a martyr, and you as erring or unjust Judges.

In April, 1840, Mrs. GODFREY, who resides in the town of Sennett, on the middle road, four miles north-east of Auburn, lost a horse. One Jack Furman, a hardened offender, stole the horse. For some purpose, not now known, he put him in the care of the Prisoner, who was seen with him. Both Furman and Freeman were arrested. The former was the real thief and Freeman constructively guilty. Freeman was arrested by Vanderheyden, taken into an upper chamber, and *there declared his innocence of the crime.* He was nevertheless committed to Jail. *All* the Police, and the most prejudiced of the witnesses for the People, have testified their entire conviction that the Prisoner was innocent. Furman was selected by favor as a witness for the People. Freeman, while in Jail, comprehending his danger, and conscious of his innocence, dwelt upon the injustice, until, having no other hope, he broke Prison and escaped. Being re-taken, he assigned as the reason for his flight, that Jack Furman stole the horse, and was going to swear him into the State Prison. The result was as he apprehended. He was convicted by the perjury of Furman, and sentenced to the State Prison for five years. This was the *first* act in the awful tragedy, of which he is the hero. Let Judges and Jurors take warning from its fatal consequences. How deeply this injustice sank into his mind, may be seen from the testimony of ARETAS A. SABIN, the keeper, who said to him on the day he entered the Prison, "I am sorry to see you come here so young." The Prisoner wept. Well would it have been, if this, the last occasion on which the Prisoner yielded to that infirmity, had, ominous as it was of such fatal mischief, been understood and heeded.

A year passed away, and he is found in the Prison, neglecting his allotted labor, sullen, and morose.

JAMES E. TYLER, the keeper, says: "I had talked to him, and found it did no good. I called him up to punish him—told him I was going to punish him for not doing more work, and should do so repeatedly until he should do more work. When I talked with him about doing more work, he gave as an excuse, '*that he was there wrongfully, and ought not to work.*'"

The excuse aggravated the severity of his castigation. Such was Penitentiary cure for incipient insanity.

VAN KEUREN, a foreman in one of the shops at the Prison, represents the Prisoner as sullen, intractable, and insolent. He caused him to be punished, although he then discovered, on all occasions, the idiotic laugh, without cause or motive, which marks the maniac.

SILAS E. BAKER remarked the same idiotic laugh when the Prisoner was at his work, in his cell, and in the Chapel.

WILLIAM P. SMITH, a foreman in the Prison, remarked his peculiarities, but unfortunately was not then led to their true cause.

THERON GREEN, as has been already seen, discovered the same peculiarities, divined their cause, held him irresponsible, and gave an unheeded warning against his enlargement.

The discipline of the Prison forbids conversation between convict and convict, and between keepers and prisoners. The iron that had entered the Prisoner's soul was necessarily concealed, but DE PUY, and WARDEN, and GREEN, who thought him changed then, as well as SMITH, VAN KEUREN, BAKER, and TYLER, who regarded him only as ignorant and obstinate, give conclusive evidence that the ruin of his mind was betrayed, in a visible change of his appearance, conduct and character.

The time at length arrived, when the secret could no longer be suppressed. The new Chaplain, the Rev. ALONZO WOOD, was in the Agent's office when the Prisoner was discharged. Two dollars, the usual gratuity, was offered him, and he was asked to sign a receipt. "*I aint going to settle so.*" For five years, until it became the ruling thought of his life, the idea had been impressed upon his mind, that he had been imprisoned wrongfully, and would, therefore, be entitled to payment, on his liberation. This idea was opposed "*by the judgment and sense of all mankind.*" The Court that convicted him, pronounced him guilty, and spoke the "sense and judgment of mankind." But still he remained unconvinced. The keepers who flogged him, pronounced his claim unjust and unfounded, and they were exponents of the "sense and judgment of all mankind." But imprisonment, bonds and stripes, could not remove the one inflexible idea. The Agent, the keepers, the Clerk, the spectators, and even the Reverend Chaplain laughed at the simplicity and absurdity of the claim of the discharged convict, when he said, "*I've worked five years for the State, and aint going to settle so.*" Alas! little did they know that they were deriding the delusion of a Maniac. Had they been wise, they would have known that

"So foul a sky clears not without a storm."

The peals of their laughter were the warning voice of Nature, for the safety of the family of VAN NEST.

Thus closes the second act of the sad drama.

The Maniac reaches his home, sinks sullenly to his seat, and hour after hour, relates to JOHN DE PUY the story of his wrongful imprisonment, and of the cruel and inhuman treatment which he had suffered, enquires for the persons who had caused him to be unjustly convicted, learns their names, and goes about drooping, melancholy and sad, dwelling continually upon his wrongs, and studying intensely in his bewildered mind how to obtain redress. Many passed him, marking his altered countenance and carriage, without stopping to enquire the cause. Dr. HERMANCE alone sought an explanation: "I met him about the first of December last; I thought his manner very singular and strange. I enquired the cause. He told me that he had been in the Prison for five years, and that he wasn't guilty, and that they wouldn't pay him. I met him afterwards in the street, again remarked his peculiarities, and enquired the cause. He answered as before, that he had been in State Prison five years wrongfully, and they wouldn't pay him."

The one idea disturbs him in his dreams and forces him from his bed; he complains that he can make no gain and can't live so; he dances to his own wild music, and encounters visionary combatants.

Time passes until February. He visits Mrs. GODFREY at her house in Sennett. He enters the house, deaf, and stands mute. "I gave him a chair," says Mrs. GODFREY, "he sat down. I asked which way he was travelling. He wanted to know if that was the place where a woman had a horse stole, five years before. I told him it was. He said he had been to Prison for stealing the horse, and didn't steal it neither. I told him I knew nothing about that, whether it was he, or not. He said he'd been to Prison for stealing a horse, and didn't steal it, and he wanted a settlement. Johnson, who was there, asked him if he should know the horse if he should see it. 'No.' 'Do you want the horse?' 'No. Are you the man who took me up? Where is the man who kept the tavern across the way and helped catch me?' 'He is gone.' I asked him if he was hungry. He said, he didn't know but he was. I gave him some cakes, and he sat and ate them."

Here were exhibited at once the wildness of the maniac, and the imbecility of the demented man. His delusion was opposed to "the sense and judgment of all mankind." Mrs. GODFREY and Mr. JOHNSON exposed its fallacy. But still the one idea remained, unconquered and unconquerable. The maniac who came to demand pay for five years unjust imprisonment, was appeased with a morsel of cake.

He was next seen at Mr. SEWARD'S office, a week or ten days before the murder. He asked if that was a 'Squire's office, and said he wanted a warrant. Mr. PARSONS, the Clerk, says: "I didn't understand, until he had asked once or twice. I asked him what he wanted a warrant for. He said, for the man who had been getting him into Prison, and he wanted to get damages. I told him the Justices' offices were up street, and he went away."

Next we find him at the office of LYMAN PAINE, Esq., Justice, on the

Saturday preceding the death of VAN NEST. Mr. PAINE says: "He opened the door, came in a few feet, and stood nearly a minute with his head down, *so*. He looked up and said: '*Sir, I want a warrant.*' 'What for.' He stood a little time, and then said again: '*Sir, I want a warrant.*' 'What do you want a warrant for?' He stood a minute, started and came up close to me, and spoke very loud: '*Sir, I want a warrant.* I am very deaf and can't hear very well.' I asked him in a louder voice, what he wanted it for. 'For a man who put me to State Prison.' 'What is your name?' '*William Freeman; and I want a warrant for the man who put me to Prison.*' I said: 'If you've been to Prison, you have undoubtedly been tried for some offence.' 'I have; it was for stealing a horse, but I didn't steal it. I've been there five years.' I asked who he wanted a warrant for. He told some name—I think it was Mr. Doty." (You well remember, gentlemen, that Mr. Doty, Mr. Hall, and Mrs. Godfrey, all of Sennett, and Jack Furman, of this town, were the witnesses against him.) "I told him if he wanted a warrant, it must be for perjury—he must give me the facts and I would see. He stood two or three minutes and then said: '*Sir, I want a warrant.*' I asked further information. He stood a little while longer, took out a quarter of a dollar, threw it on the table, and said: '*Sir, I demand a warrant*'—appeared in a passion, and soon after went out. He returned in the afternoon, said he would have a warrant, and gave the names of Mr. Doty and Mrs. Godfrey."

Mr. PAINE saw, in all this, evidence of stupidity, ignorance, and malice, only, but not of Insanity. But, gentlemen, if he could have looked back to the origin of the Prisoner's infatuation, and forward to the dreadful catastrophe on the shore of the Owasco Lake, as we now see it, who can doubt that he would then have pronounced the Prisoner a maniac, and have *granted*, not the warrant he asked, but an order for his commitment to the County Jail, or to the Lunatic Asylum?

Denied the process to which he thought himself entitled, he proceeded a day or two later to the office of JAMES H. BOSTWICK, Esq. another Justice. "I saw him," says this witness, "a day or two before the murder. He came, and said he wanted a warrant. I asked for whom. He replied; '*for those that got me to Prison. I was sent wrongfully. I want pay.*' I asked him who the persons were. He mentioned a widow and two men. He mentioned Mrs. Godfrey as the widow woman, Jack Furman and David W. Simpson as the two men." (Simpson was the constable by whom he was arrested the second time for stealing the horse.) Mr. BOSTWICK declined issuing the warrant, and informed him there was no remedy, and again expounded to him the "sense and judgment of all mankind," in opposition to his delusion.

According to the testimony of JOHN DE PUY, the Prisoner was agitated by alternate hope and despair in regard to his redress. At one time he told DE PUY, that he had got it all fixed, and wanted him to go down to the

Justice's office and see that he was paid right. At another, he told De PUY that the "'Squires wouldn't do nothing about it; that he could get no warrant, nor pay, and he couldn't live so."

Then it was that the one idea completely overthrew what remained of mind, conscience and reason. If you believe HERSEY, Freeman, about a week before the Murder, showed him several butcher knives; told him he meant to kill DE PUY, his brother-in-law, for trivial reasons, which he assigned, and said that he had found the folks that put him in Prison, and meant to kill them. HERSEY says: "I asked him who they were. He said, *they were Mr. Van Nest*, and said no more about them. He didn't say where they lived, and nothing about any other man, woman or widow." This witness admits that he suppressed this fact on the preliminary examination.

If you reject this testimony, then there is no evidence that he ever had any forethought of slaying VAN NEST. If you receive it, it proves the complete subversion of his understanding; for JOHN G. VAN NEST, and all the persons slain, resided not in Sennett, nor in Auburn, but four miles south of the latter place, and eight miles from the house of Mrs. Godfrey. The Prisoner, within a week before the crime, named to the magistrates every person who was concerned in his previous conviction. We have shown that neither JOHN G. VAN NEST, nor any of his family or kindred, nor any person connected with him, was, or could have been, a party, a magistrate, a witness, a constable, a sheriff, a grand Juror, Attorney, petit Juror, or Judge in that prosecution, or ever knew or heard of the prosecution, or ever heard or knew that any such larceny had been committed, or that such a being as the Prisoner existed. Mrs. GODFREY and the witnesses on the former occasion, became known to the remaining family and relatives of VAN NEST, here in Court, for the first time, during these trials.

You will remember that Erskine's test of a delusion that takes away responsibility, is—*that the criminal act must be the immediate, unqualified offspring of the delusion.* I shall now proceed to show that such is the fact in the present case.

The first witness to whom the Prisoner spoke concerning the deeds which he had committed, was GEORGE B. PARKER. This was at Phœnix, Oswego county, immediately after his arrest, within twenty hours after the perpetration of the crime. "I pushed very hard for the reasons," says the witness; "what he had against VAN NEST. '*I suppose you know I've been in State Prison five years*,' he replied. 'I was put there innocently; I've been whipped, and knocked, and abused, and made deaf, and there won't any body pay me for it.'"

VANDERHEYDEN arrived soon afterwards. He says: "I called the Prisoner aside, and said to him; 'Now wer'e alone, and you may as well tell me how you came to commit this.' He says to me: '*You know there is no*

law for me.' I asked him what he meant by that '*no law.*' He said, 'THEY OUGHT TO PAY ME.'"

ETHAN A. WARDEN followed him into his cell in the Jail, and asked him, "When you started from home, what did you go up there for? '*I must go.*' Why must you go? '*I must begin my work.*' What made you do it? '*They brought me up so.*' Who brought you up so? '*The State.*' They didn't tell you to kill, did they? '*Don't know—won't pay me.*' Did you know these folks before you went to Prison? '*No.*' Was you there a few days before, to get work? '*Yes.*' Did they say any thing to offend you or make you angry? '*No.*' What made you kill them; what did you do it for? '*I must begin my work.*' Didn't you expect to be killed? '*Didn't know but I should.*' If you expected to be killed what made you go; did you go to get money? '*No.*' Did you expect to get money? '*No.*' Did you intend to get the horse? '*No.*' How did you come to take him? '*Broke my things,* (meaning knives)—*hand was cut—came into my mind—take the horse—go—and—get so—could do more work.*' If you had not broke your things, what would you have done? '*Kept to work.*' Did you mean to keep right on? '*I meant to keep to work.*' Would you have killed *me* if you had met me? ''*Spose I should.*' What made you begin at that house? '*Stopped two or three places, thought it wasn't far out enough to begin.*' Are you not sorry you killed so many? '*Don't think any thing about it.*'

The Prisoner has invariably given similar answers to every person who has asked him the motive for his crime.

WARREN T. WORDEN, Esq., says, "I asked him why he took the horse? He answered, '*My hand was hurt, and I couldn't kill any more.*' I asked him why he killed them? and he answered, '*Why did they send me to State Prison when I wasn't guilty.*' And in making this reply he trembled, and I thought he was going to weep. I told him they would hang him now; he showed no feeling."

Dr. FOSGATE says that Dr. HURD asked him what he killed those folks for? He replied, "*They put me in Prison.*"

JOHN R. HOPKINS says, "I turned his attention to the idea of pay—if he had got his pay for his time in Prison? That question raised him up and he looked comparatively intelligent, and brightened up his whole countenance. He said, '*No.*' Who ought to pay you? '*All of them.*' Ought I? He looked up with a flash of intelligence, said nothing, but looked intently at me, and the answer was conveyed by the look. I asked if this man, (pointing to Hotchkiss) ought to pay him. He looked at him, as at me, and said, '*Do what's right,*' or '*we'll do what's right.*' We then spoke about his trial, and he was stupid and dull again."

The Rev. J. M. AUSTIN says: "I put questions to find his motive for killing that family. His answers were very broken and incoherent, but invariably referred to his being in Prison innocently. Had the persons you

killed any thing to do with putting you into Prison? '*No.*' Did you know their names? '*No.*' Why did you kill that particular family? No direct answer, but something about being put in Prison wrongfully. Do you think it right to kill people who had no hand in putting you into Prison? He gave an incoherent reply. I gathered, '*shall do something to get my pay.*' How much pay ought you to have? '*Don't know.*' Was it right to kill those innocent persons for what had been done by others? '*They put me in Prison.*' Who did—the Van Nest family? '*No.*' Why then did you kill them? Did you think it right to kill that innocent child? I understood from his gestures in reply, that he was in a labyrinth, from which he was incapable of extricating himself. How did you happen to go that particular night? '*The time had come.*' Why did you enter that particular house? '*I went along out and thought I might begin there.*' I asked if he ever called on Mrs. Godfrey. He said, '*I went to Mrs. Godfrey to get pay, and she wouldn't pay me. I went to Esquires Bostwick and Paine and they wouldn't do nothing about it.*"

Mr. IRA CURTIS, says: "I asked him how he came up there. '*I went up south a piece.*' How far? '*Stopped at the house beyond there.*' What for? '*To get a drink of water.*' What did you go into Van Nest's house for? '*Don't know.*' Did you go in to murder or kill them? '*Don't know.*' Was it for money? '*Didn't know as they had any.*' Did you kill the child? '*They said I killed one, but I didn't.*' What did you kill them for? '*You know I had my work to do.*' Had you any thing against these people? '*Don't know.*' Why didn't you commence at the other place? '*Thought it wasn't time yet.*' He said '*they wouldn't pay him. He had been inprisoned and they wouldn't pay him.*'"

Dr. HERMANCE says: "Dr. PITNEY asked him how he happened to go up. '*It rained and I thought it would be a good time.*' Why did you go to Van Nest's, and not to some other family? No answer. Why didn't you come and kill me? He smiled, but gave no answer. Don't you think you ought to be hung for killing Van Nest and his family? The same question was repeated authoritatively, and he replied: '*Sent to Prison for nothing—ought I to be hung?*' Suppose you had found some other person, would you have killed any other as well as Van Nest? '*Yes.*' I asked, why did you kill Van Nest and his family? '*For that horse.*' What do you mean by killing '*for that horse?*' '*They sent me to Prison and they won't pay me.*' Had Van Nest any thing to do with sending you to Prison? '*No.*'"

Dr. BRIGGS says: "When I repeated the question, why did you kill Van Nest? he replied, '*Why was I put in Prison five years?*'"

WILLIAM P. SMITH, asked: "Why did you kill those people? '*I've been to Prison wrongfully five years. They wouldn't pay me.*' Who? '*The people, so I thought I'd kill somebody.*' Did you mean to kill one more than another? '*No.*' Why did you go so far out of town? '*Stopped at one place this side; wouldn't go in; couldn't see to fight; 'twas dark; looked*

up street; saw a light in next house; thought I'd go there; could see to fight.' Don't you know you've done wrong? '*No.*' Don't you think 'twas wrong to kill the child? After some hesitation he said, '*Well—that looks kind o'h-a-r-d.*' Why did you think it was right? '*I've been in Prison five years for stealing a horse, and I didn't do it; and the people won't pay me; made up my mind, ought to kill somebody.*' Are you not sorry? '*No.*' How much pay do you want? '*Don't know; good deal.*' If I count you out a hundred dollars, would that be enough? *He thought it wouldn't.* How much would be right? '*Don't know.*' He brightened up, and finally said he thought '*about a thousand dollars would be about right.*'"

It would be tedious to gather all the evidence of similar import. Let it suffice, that the witnesses who have conversed with the Prisoner, as well those for the People as those for him, concur fully in the same statement of facts, as to his reasons and motives for the murders. We have thus not merely established the existence of an insane delusion, but have traced directly to that overpowering delusion, the crimes which the Prisoner has committed.

How powerful that delusion must have been, may be inferred from the fact that the Prisoner, when disabled, desisted from his work, and made his retreat to his friends in Oswego county, not to escape from punishment for the murders, but as he told Mr. E. A. WARDEN, to wait till his wounded hand should be restored, that he might resume his dreadful butchery; and, as he told Dr. BIGELOW, because he counldn't "handle his hand." The intenseness of this delusion exceeds that under which HATFIELD assailed the King; that which compelled HENRIETTE CORNIER to dissever the head of the child entrusted to her care; and that of RABELLO, the Portuguese, who cut to pieces with his axe, the child who trod upon his feet.

The next feature in the cause, which will claim your attention, gentlemen of the Jury, is the MANNER AND CIRCUMSTANCES OF THE ACT ITSELF.

In Ray's Medical Jurisprudence, at page 224, are given several tests by which to distinguish between the homicidal Maniac and the Murderer.

We shall best consider the present case by comparing it with those tests:

I. "There is the *irresistible, motiveless* impulse to destroy life." Never was homicide more *motiveless*, or the impulse more completely irresistible, than in the present case, as we have learned from the testimony already cited.

II. "In nearly all cases the criminal act has been preceded, either by some well marked disturbance of the health, or by an irritable, gloomy, dejected, or melancholy state; in short, by many of the symptoms of the incubation of mania." How truly does this language describe the condition of the Prisoner during the brief period of his enlargement!

III. "The impulse to destroy is powerfully excited by the sight of murderous weapons—by favorable opportunities of accomplishing the act—by contradiction, disgust, or some other equally trivial and even imaginary circumstance."

While we learn from HERSEY's testimony, that the Prisoner kept a store of knives fit for such a deed, we find in the denial of his demands for settlement, for pay, and for process, by Mrs. GODFREY and the magistrates, the contradiction and causes of disgust here described.

IV. "The victims of the homicidal monomaniac are either entirely unknown or indifferent to him, or they are amongst his most loved and cherished objects."

FREEMAN passed by his supposed oppressors and persecutors, and fell upon a family absolutely indifferent, and almost unknown to him, while he reserved the final stroke for his nearest and best friend, and brother-in-law.

V. "The monomaniac sometimes diligently conceals and sometimes avows his purpose, and forms schemes for putting it into execution, testifying no sentiment of grief."

The Prisoner concealed his purpose from all but HERSEY. He purchased the knife which he used, in open day, at a blacksmith's shop, in the presence of persons to whom he was well known, and ground it to its double edge before unsuspecting witnesses, as coolly and deliberately as if it were to be employed in the shambles. He applied at another blacksmith's shop where he was equally well known, to have another instrument made. He shaped the pattern in a carpenter's shop, carried it to the smith, disagreed about the price, and left the pattern upon the forge, in open sight, never thinking to reclaim it, and it lay there until it was taken by the smith before the coroner's inquest, as an evidence of his design. So strange was his conduct, and so mysterious the form of the knife which he required, that MORRIS, the smith, suspected him, and told him that he was going to *kill somebody;* to which he answered with the nonchalance of the butcher, "*that's nothing to you if you get your pay for the knife.*" On the two days immediately preceding the murder, he is found sharpening and adjusting his knives at a turner's shop, next door to his own dwelling, in the presence of persons to whom he is well known, manifesting no apprehension, and affecting no concealment.

The trivial concerns of his finance and occupation are as carefully attended to, as if the murder he was contemplating had been an ordinary and lawful transaction. HYATT demands three shillings for the knife. The Prisoner cheapens until the price is reduced to eighteen pence, with the further advantage that it should be sharpened, and fitted to a handle. HYATT demands six pence for putting a rivet into his knife. He compromises, and agrees to divide the labor and pay half the price. He deliberately takes out his wallet and lays down three cents for SIMPSON, the turner, for the use of the grindstone. On the very day of the murder, he begs some grease at the Soap Factory to soften his shoes, and tells AARON DEMUN that he is going into the country to live in peace. At four o'clock in the afternoon he buys soap at the merchant's for MARY ANN NEWARK, the poor woman at whose house he lived. He then goes cautiously to his room, takes the knives

from the place of their concealment under his bed, throws them out of the window, to avoid exposure to her observation, and when the night has come, and the bells are ringing for church, and all is ready, he stops to ask the woman whether there is any *chore* to be done. She tells him, none, but to fill the tub with snow. He does it as carefully as if there were no commotion in his mind, and then sallies forth, takes up his instruments, and proceeds on his errand of death. He reconnoiters the house on the north of VAN NEST'S, VAN NEST'S house, and BROOKS' house on the south, and finally decides upon the middle one as the place of assault. It does not affect his purpose that he meets Mr. COX and Mr. PATTEN, under a broad, bright moonlight. He waits his opportunity, until WILLIAMSON, the visitor, has departed, and VAN ARSDALE, the laboring man, has retired to rest. With an energy and boldness that no sane man, with such a purpose, could possess, he mortally stabs four persons, and dangerously wounds a fifth, in the incredibly short space of five minutes. Disabled, and therefore desisting from further destruction, he enters the stable, takes the first horse he finds, mounts him without a saddle, and guiding him by a halter, dashes towards the town. He overtakes and passes WILLIAMSON, the visitor, within the distance of three-fourths of a mile from the house which he had left in supposed security. Pressing on, the jaded beast, worn out with age, stumbles and brings him to the ground. He plunges his knife into the breast of the horse, abandons him, scours forward through the town, across the bridge and on the middle road to BURRINGTON'S; there seizes another horse, mounts him, and urges forward, until he arrives among his relations, the DE PUYS, at Schroeppel, thirty miles distant. They, suspecting him to have stolen the horse, refuse to entertain him. He proceeds to the adjoining village, rests from his flight, offers the horse for sale, and when his title to the horse is questioned, announces his true name and residence, and refers to the DE PUYS, who had just cast him off, for proof of his good character and conduct. When arrested and charged with the murder, he denies the act.

Now the SIXTH test given by Ray, is, that "while most maniacs having gratified their propensity to kill, voluntarily confess the act, and quietly give themselves up to the proper authorities, a very few, only, and those to an intelligent observer show the strongest indications of insanity, fly, and persist in denying the act."

VII. "Murder is never criminally committed without some *motive* adequate to the purpose in the mind that is actuated by it, while the insane man commits the crime without any motive whatever, strictly deserving the name."

VIII. "The *criminal* never sheds more blood than is necessary for the attainment of his object. The *monomaniac* often sacrifices all within his reach, to the cravings of his murderous propensity."

IX. "The *criminal* either denies or confesses his guilt; if the latter, he sues for mercy, or glories in his crimes. On the contrary, the *maniac*, after

gratifying his bloody desires, testifies neither remorse, repentance, nor satisfaction."

X. "The *criminal* has accomplices; the maniac has none."

XI. "The murderer never conceives a design to murder without projecting a plan for concealing his victim, effecting his escape, and baffling pursuit. The maniac prepares the means of committing the crime, with calmness and deliberation, but never dreams of the necessity of concealing it when done, or of escape, until his victim lies at his feet."

Dr. BIGELOW and others state that the Prisoner told them, as obviously was the case, that he sought no plunder; that he thought not of escape or flight, until his *things* were broken, and his hand was cut, so that he could not continue his WORK. He seized the nearest and the most worthless horse in the stable, leaving two fleet animals remaining in their stalls. He thought only of taking Burrington's horse when the first failed: all he cared for was to get out of the county, there to rest, until his hand was cured, so that he could come back and do more *work*. He rested from flight within thirty miles from the seat of his crimes, and, in selling his horse, was depriving himself of the only means of making his escape successful. When the person of VAN NEST was examined, his watch, pocket-book, money and trinkets were found all undisturbed. Not an article in the house had been removed; and when the Prisoner was searched upon his arrest, there was found in his pockets nothing but one copper coin, the hundredth part of a dollar.

Without further detail, the parallel between the Prisoner and the tests of madness established by Medical Jurisprudence, is complete.

It remains, gentlemen, to conclude the demonstration of the Prisoner's insanity, by referring to the testimony of the witnesses who have given their opinion on that question. CORNELIUS VAN ARSDALE and HELEN HOLMES, the survivors of that dreadful scene at VAN NEST'S house, did not think the Prisoner insane. The latter had only seen the Prisoner for a moment, during the previous week, when he called there and asked for work. The former had never seen him before that fatal night. Both saw him there, only for a moment, and under circumstances exhibiting him as a ruthless Murderer.

WILLIAMSON thinks he was not insane, but he saw the Prisoner only when he swept past him, fleeing from his crime.

JAMES AMOS, ALONZO TAYLOR, GEORGE BURRINGTON, and GEORGE B. PARKER, say they read no indications of insanity in his conduct when arrested; but neither of them ever saw him before, or has seen him since.

ROBERT SIMPSON, the turner, GEORGE W. HYATT and JOSEPH MORRIS, the blacksmiths, did not suspect him to be insane, when he purchased and sharpened his knives. Neither of them ever knew him before, or has known him since.

NATHANIEL LYNCH, though he furnishes abundant evidence of the Prisoner's insanity, is himself unconvinced.

AARON DEMUN, a colored man, does not think him insane, but stands alone, of all who knew him in his youth.

ISRAEL G. WOOD and STEPHEN S. AUSTIN do not think him insane. They were his Jailers six years ago, but they have not examined him since his arrest.

VANDERHEYDEN and MUNROE think him sane, but each testifies under feelings which disqualify him for impartiality.

JONAS BROWN thinks him not insane, but never saw him, except when he was buying a pound of soap at his store.

JOHN P. HULBERT and BENJAMIN F. HALL had brief conversations with him, in the Jail, after his arrest, but made no examination concerning his delusion.

LEWIS MARKHAM and DANIEL ANDRUS think him not insane, but they have made no examination of the subject; while both give evidence that he was once as bright, active and cheerful, as he is now stupid, senseless and imbecile.

BENJAMIN VAN KEUREN, ARETAS A. SABIN, SILAS E. BAKER and JAMES E. TYLER, all keepers in the State Prison, and ALONZO WOOD, the Chaplain, did not suspect him of insanity in the State Prison. Their conduct towards him while there, proves their sincerity; but his history under their treatment, will enable you to correct their erroneous judgments. It was their business, not to detect and cure insanity, but to prescribe his daily task, and to compel him by stripes to perform it in silence.

MICHAEL S. MYERS, the former District Attorney, who prosecuted the Prisoner for stealing the horse, looks at him now, and can see no change in his personal appearance; but he has never thought the subject worthy of an examination, and has not, in six years, spoken with or thought of the accused.

LYMAN PAINE and JAMES H. BOSTWICK, to whom he applied for process, continue now as well convinced of the Prisoner's sanity, as they were when he applied to them for warrants, which it was absurd for him to ask. Neither of them has examined him since his arrest, or stopped to compare his conduct in the Murder with his application for a warrant, or with the strange delusion which brought him before them.

Such and so feeble is the testimony as to the Prisoner's sanity, given by others than the medical witnesses. Nor is the testimony of the medical witnesses on the part of the People entitled to more respect.

Dr. GILMORE pronounces a confident opinion that the Prisoner is sane; but the witness is without experience, or any considerable learning on that subject, and his opinion is grounded upon the fact that the accused had intellect enough to prepare for his crime, and sense enough to escape, in the

manner so often described. I read to the Doctor the accounts of several cases in Bedlam, and without exception he pronounced the sufferers sane criminals.

Dr. HYDE visited the Prisoner twice in his cell, perhaps thirty minutes each time, and as the result of those visits, says he was rather of the opinion that he was sane. Dr. HYDE expressly disavows any learning or experience on the subject of insanity, and does not give the details of his examination.

Dr. DAVID DIMON visited the Prisoner several times in Jail, but could not discover any thing that he could call insanity. He thinks there can be no insane delusion in this case, because he thinks that an insane delusion is the thorough conviction of the reality of a thing, which is opposed by the evidence of the sufferer's senses. The Doctor claims neither study nor experience; pronounces the Prisoner to be of a grade of intellect rather small for a Negro; thinks he has not as much intellect as a child of fourteen years of age, and in regard to knowledge, would compare him with a child two or three years old, who knows his A, B, C, but cannot count twenty-eight. Those who seek the extreme vengeance of the law, will, if successful, need all the consolation to be derived from the sanity of the accused, if, at the age of twenty-three, he be thus imbecile in mind and barren in knowledge.

Dr. JEDEDIAH DARROW has read nothing on the subject of insanity for forty years, and has never had any experience. He declares that his conclusion is not to be regarded as a *professional* opinion. He talked with the Prisoner *once* in Jail, to ascertain his sanity, and thought it important *to avoid all allusion to the crimes he had committed, their motives, causes and circumstances.* He *now* thinks that it would have been wise, where monomania was suspected, to examine into the alleged *delusion.* He contents himself with saying, he did not *discover insanity.*

Dr. JOSEPH CLARY visited the Prisoner in Jail: cannot give a decided opinion; his *prevailing* impression is, that the Prisoner is not insane, but he has not had opportunities enough to form a correct opinion. He has never seen a case of Dementia, and knows it only from definitions in books, which he has never tested.

Dr. BIGELOW, Physician to the Prison, discovered nothing in his examinations which led him to suspect insanity. The Doctor has a salary of Five Hundred Dollars per annum; his chief labor in regard to insanity is to detect counterfeits in the Prison; and although he admits that the Prisoner has answered him freely, and unsuspectingly, and fully, he accounts for the condition of his mind, by saying that he regards him "*as an ignorant, dull, stupid, degraded, debased, and morose, but not insane person.*"

Dr. SYLVESTER WILLARD, without particular experience or learning in this branch, concurs in these opinions.

Dr. THOMAS SPENCER, Professor in the Medical College at Geneva,

brings up the rear of the People's witnesses. I complain of his testimony, that it was covered by a masked battery. The District Attorney opened the case with denunciations of scientific men, said that too much learning made men mad, and warned you therefore against the educated men who might testify for the Prisoner. I thought at the time that these were extraordinary opinions. I had read,

> "A little learning is a dangerous thing,
> Drink deep or taste not the Pierian Spring;
> These shallow draughts intoxicate the brain,
> But drinking largely sobers us again."

What was my surprise to find that all these denunciations against learning and experience, made by the Counsel for the People, were only a cover for Dr. SPENCER.

He heralds himself as accustomed to teach, and informs us that he has visited the principal Hospitals for the Insane in London, Paris, and other European capitals. How unfortunate it was that on his cross examination, he could not give the name or location of any Asylum in either of those cities! Even the names and locations of the "Charenton" and "Bicetre" had escaped his memory.

But it is no matter. The Doctor overwhelms us with learning, universal and incomprehensible. Here is his map* of the mental faculties, in which twenty-eight separate powers of mind are described in odd and even numbers.

The arrows show the course of ideas through the mind. They begin with the motives in the region of the highest odd numbers in the south-west corner of the mind, marked A, and go perpendicularly northward, through Thirst and Hunger to Sensation, marked B; then turn to the right, and go eastward, through Conception, to Attention, marked C, and then descend southward, through Perception, Memory, Understanding, Comparison, Combination, Reason, Invention, and Judgment; wheel to the left under the Will, marked D, and pass through Conscience, and then to V, the unascertained center of Sensation, Volition, and Will. This is the natural turnpike road for the ideas when we are awake and sane. But here is an open shunpike, X, Y, Z, on which Ideas, when we are asleep or insane, start off and pass by Conscience, and so avoid paying toll to that inflexible gate-keeper. Now all this is very well, but I call on the Doctor to show how the fugitive idea reached the Will at D, after going to the end of the shun-pike. It appeared there was no other way but to dart back again, over the shun-pike, or else to go cringing, at last, through the iron gate of Conscience.

Then there was another difficulty. The Doctor forgot the most important point on his own map, and could not tell, from memory, where he had *located "the unascertained centre."*

*See page 356.

The Doctor pronounces the Prisoner sane because he has the chief intellectual faculties, Sensation, Conception, Attention, Imagination, and Association. Now here is a delicate piece of wooden cutlery, fabricated by an inmate of the Lunatic Asylum at Utica, who was acquitted of murder on the ground of Insanity. He who fabricated it evinced in the manufacture, Conception, Perception, Memory, Comparison, Attention, Adaptation, Co-ordination, Kindness, Gratitude, Mechanical Skill, Invention, and Pride. It is well for him that Dr. SPENCER did not testify on his trial.

Opposed to these vague and unsatisfactory opinions is the evidence of SALLY FREEMAN, the Prisoner's mother, who knew him better than any other one; of JOHN DE PUY, his brother-in-law and intimate friend; of ETHAN A. WARDEN, his employer in early youth; of DEBORAH DE PUY, his associate in happier days; of ADAM GRAY, who knew him in childhood, and sheltered him on his discharge from the State Prison; of IRA CURTIS, in whose family he resided seven years ago; of DAVID WINNER, the friend of his parents; of ROBERT FREEMAN, his ancient fellow servant at the American Hotel; of JOHN R. HOPKINS, an intelligent and practical man who examined him in jail; of THERON GREEN, who discovered his insanity in the State Prison; of the Rev. JOHN M. AUSTIN, the one good Samaritan who deemed it a pastoral duty to visit even a supposed Murderer in Prison; of WILLIAM P. SMITH, who has corrected now the error of his judgment while in the State Prison; of PHILO H. PERRY, a candid and enlightened observer; and of WARREN T. WORDEN, Esq., a Lawyer of great shrewdness and sagacity.

Then there is an overwhelming preponderance of medical testimony. The witnesses are, Dr. VAN EPPS, who has followed the accused from his cradle to the present hour, with the interest of a humane and sincere friend; Dr. FOSGATE, who attended him in the Jail, for the cure of his disabled limb; Dr. BRIGGS, equal in public honors to Dr. BIGELOW, and greatly his superior in candor as well as learning, and who compares the Prisoner now with what he was in better days; Dr. MCNAUGHTON, of Albany, and Dr. HUN, of the same place, gentlemen known throughout the whole country for eminence in their profession; Dr. MCCALL, of Utica, President of the Medical Society of the State of New York; Dr. COVENTRY, Professor of Medical Jurisprudence in Geneva College, and one of the Managers of the State Lunatic Asylum at Utica; and Dr. BRIGHAM, the experienced and distinguished Superintendent of that Institution. This last gentleman, after reviewing the whole case, declares that he has no doubt that the Prisoner is now insane, and was so when his crimes were committed; that he should have received him as a patient then, on the evidence given here, independently of the crime, and should now receive him upon all the evidence which has been submitted to you.

Dr. BRIGHAM pronounces the Prisoner to be a *Monomaniac* laboring under the overwhelming progress of the delusion I have described, which had

its paroxysm in the Murders of which he is accused; and declares that since that time he has sunk into a deep and incurable *Dementia*, the counter-part of Idiocy. In these opinions, and in the reasons for them, so luminously assigned by him, all the other medical gentlemen concur.

You may be told, gentlemen, that Dr. HUN and Dr. MCNAUGHTON testified from mere observation of the Prisoner without personal examination. Yes! I will thank the Attorney General for saying so. It will recall the strangest passages of all, in this the strangest of all trials. This is a trial for MURDER. A verdict of guilty will draw after it a sentence of DEATH. The only defence is Insanity. Insanity is to be tested by examining the Prisoner as he *now* is, and comparing him with what he *was* when the crime was committed, and during all the intervening period, and through all his previous life. Dr. HUN and Dr. MCNAUGHTON were served with subpœnas, requiring them to attend here. They came, proceeded to the Jail, and examined the Prisoner on Wednesday night during the trial. Early on Thursday morning they proceeded again to the Jail to resume their examination, and were then denied access. It is proved that the Attorney General instructed the Sheriff to close the doors against them, and the Attorney General admits it. Dr. HUN and Dr. MCNAUGHTON are called to testify, and are ready to testify that the examination they did make, satisfied them that the Prisoner is insane, and that he was insane when he committed the homicide. The Attorney General objects, and the Court overrules the evidence, and decides that these eminent physicians shall testify only from mere external observation of the Prisoner, in Court, and shall expressly forget and lay aside their examinations of the Prisoner, made in Jail, by conversations with him. Nor was the process by which the Court effected this exclusion less remarkable than the decision itself. The Court had obtained a verdict on the sixth of July, on the preliminary issue, that the Prisoner was sufficiently sane to distinguish right from wrong. That verdict has been neither *pleaded* nor *proved* on this trial, and if it had been, it would have been of no legal value. Yet the Court founds upon it a Judicial Statute of Limitations, and denies us all opportunity to prove the Prisoner insane, after the sixth of July. I tremble for the Jury that is to respond to the popular clamor under such restraints as these. I pray God that these Judges may never experience the consequences which must follow such an adjudication. But, gentlemen, Dr. HUN and Dr. MCNAUGHTON bear, nevertheless, the strongest testimony that the Prisoner is an *idiot*, as appears by observation, and that the evidence, as submitted to them, confirms this conviction.

There is proof, gentlemen, stronger than all this. It is silent, yet speaking. It is that *idiotic smile* which plays continually on the face of the Maniac. It took its seat there while he was in the State Prison. In his solitary cell, under the pressure of his severe tasks and trials in the work-shop, and during the solemnities of public worship in the chapel, it appealed, although in vain, to his task-masters and his teachers. It is a smile, never rising into

laughter, without motive or cause—the smile of vacuity. His mother saw it when he came out of Prison, and it broke her heart. JOHN DEPUY saw it and knew his brother was demented. DEBORAH DE PUY observed it and knew him for a fool. DAVID WINNER read in it the ruin of his friend, SALLY'S son. It has never forsaken him in his later trials. He laughed in the face of PARKER, while on confession at Baldwinsville. He laughed involuntarily in the faces of WARDEN, and CURTIS, and WORDEN, and AUSTIN, and BIGELOW, and SMITH, and BRIGHAM, and SPENCER. He laughs perpetually here. Even when VAN ARSDALE showed the scarred traces of the assassin's knife, and when HELEN HOLMES related the dreadful story of the Murder of her patrons and friends, he laughed. He laughs while I am pleading his griefs. He laughs when the Attorney General's bolts would seem to rive his heart. He will laugh when you declare him guilty. When the Judge shall proceed to the last fatal ceremony, and demand what he has to say why the Sentence of the Law should not be pronounced upon him, although there should not be an unmoistened eye in this vast assembly, and the stern voice addressing him should tremble with emotion, he will even then look up in the face of the Court and laugh, from the irresistible emotions of a shattered mind, delighted and lost in the confused memory of absurd and ridiculous associations. Follow him to the scaffold. The executioner cannot disturb the calmness of the idiot. He will laugh in the agony of death. Do you not know the significance of this strange and unnatural risibility? It is a proof that God does not forsake even the poor wretch whom we pity or despise. There are, in every human memory, a well of joys and a fountain of sorrows. Disease opens wide the one, and seals up the other forever.

You have been told, gentlemen, that this smile is hereditary and accustomed. Do you think that ever ancestor or parent of the Prisoner, or even the poor idiot himself, was in such straits as these? How then can you think that this smile was ever before recognized by these willing witnesses? That chaotic smile is the external derangement which signifies that the strings of the harp are disordered and broken, the superficial mark which God has set upon the tabernacle, to signify that its immortal tenant is disturbed by a Divine and mysterious commandment. If you cannot see it, take heed that the obstruction of your vision be not produced by the mote in your own eye, which you are commanded to remove before you consider the beam in your brother's eye. If you are bent on rejecting the testimony of those who know, by experience and by science, the deep afflictions of the Prisoner, beware how you misinterpret the hand-writing of the Almighty.

I have waited until now, gentlemen, to notice some animadversions of the Counsel for the People. They say that drunkenness will explain the conduct of the Prisoner. It is true that JOHN DE PUY discovered that those who retailed poisonous liquors were furnishing the Prisoner with this, the worst of food for his madness. But the most laborious investigation has re-

sulted in showing, by the testimony of ADAM GRAY, that he once saw the Prisoner intoxicated, and that he, with some other persons, drank spirits in not immoderate quantity, on the day when VAN NEST was slain. There is no other evidence that the Prisoner was ever intoxicated. JOHN DE PUY and ADAM GRAY testify that except that one time he was always sober. DAVID WINNER proves he was sober all the time the witness lived at WILLARD'S, and MARY ANN NEWARK says he was entirely sober when he sallied forth on his fatal enterprise. The only value of the fact of his drunkenness, if it existed, would be to account for his disturbed nights at DE PUY'S, at GRAY'S and at WILLARD'S. It is clearly proved that his mind was not beclouded, nor his frame excited, by any such cause on any of those occasions; and Doctor BRIGHAM truly tells you that while the Maniac goes quietly to his bed, and is driven from it by the dreams of a disturbed imagination, the drunkard completes his revels and his orgies before he sinks to rest, and then lies stupid and besotted until nature restores his wasted energies with return of day.

Several of the Prisoner's witnessess have fallen under the displeasure of the Counsel for the People. JOHN DE PUY was asked on the trial of the preliminary issue, whether he had not said, when the Prisoner was arrested, that he was no more crazy than himself. He answered, that he had not said "in those words," and asked leave to explain by stating what he had said. The Court denied him the right and obliged him to answer, Yes or No, and of course he answered No. On this trial he makes the explanation, that after the Murder of VAN NEST, being informed that the Prisoner had threatened his life, he said, "Bill would do well enough if they wouldn't give him liquor; he was bad enough at any time, and liquor made him worse." By a forced construction, this declaration, which substantially agrees with what he is proved by other witnesses to have said, is brought in conflict with his narrow denial, made on the former trial. It has been intimated on this trial, that the Counsel for the Prosecution would contend that JOHN DE PUY was an accomplice of the Prisoner and the instigator of his crimes. This cruel and unfeeling charge has no ground, even in imagination, except that twelve years ago DE PUY labored for six weeks on the farm of the late Mr. VAN NEST, then belonging to his father-in-law, Peter Wyckoff, that a misunderstanding arose between them, which they adjusted by arbitration, and that they were friends always afterwards. The elder Mr. Wyckoff died six years ago. It does not appear that the late Mr. VAN NEST was even married at that time. JOHN DE PUY is a colored man, of vigorous frame, and strong mind, with good education. His testimony, conclusive in this cause, was intelligently given. He claims your respect as a representative of his people, rising to that equality to which it is the tendency of our institutions to bring them. I have heard the greatest of American Orators. I have heard Daniel O'Connell and Sir Robert Peel, but heard JOHN DE PUY make a speech excelling them all in eloquence:

"They have made WILLIAM FREEMAN what he is, a brute beast; they don't make any thing else of any of our people but brute beasts; but when we violate their laws, then they want to punish us as if we were men." I hope the Attorney General may press his charge; I like to see persecution carried to such a length; for the strongest bow, when bent too far, will break.

DEBORAH DE PUY is also assailed as unworthy of credit. She calls herself the wife of Hiram De Puy, with whom she has lived ostensibly in that relation for seven years, in, I believe, unquestioned fidelity to him and her children. But it appears that she has not been married with the proper legal solemnities. If she were a white woman, I should regard her testimony with caution, but the securities of marriage are denied to the African race over more than half this country. It is within our own memory that the master's cupidity could divorce husband and wife within this State, and sell their children into perpetual bondage. Since the Act of Emancipation here, what has been done by the white man to lift up the race from the debasement into which he had plunged it? Let us impart to Negroes the knowledge and spirit of Christianity, and share with them the privileges, dignity and hopes of citizens and Christians, before we expect of them purity and self respect.

But, gentlemen, even in a slave State, the testimony of this witness would receive credit in such a cause, for Negroes may be witnesses there, for and against persons of their *own* caste. It is only when the life, liberty or property of the white man is invaded, that the Negro is disqualified. Let us not be too severe. There was once upon the earth a Divine Teacher who shall come again to judge the world in righteousness. They brought to him a woman taken in adultery, and said to him that the law of Moses directed that such should be stoned to death, and he answered: "Let him that is without sin cast the first stone."

The testimony of SALLY FREEMAN, the mother of the Prisoner, is questioned. She utters the voice of NATURE. She is the guardian whom God assigned to study, to watch, to learn, to know what the Prisoner was, and is, and to cherish the memory of it forever. She could not forget it if she would. There is not a blemish on the person of any one of us, born with us or coming from disease or accident, nor have we committed a right or wrong action, that has not been treasured up in the memory of a mother Juror! roll up the sleeve from your manly arm, and you will find a scar there of which you know nothing. Your mother will give you the detail of every day's progress of the preventive disease. SALLY FREEMAN has the mingled blood of the African and Indian races. She is nevertheless a woman, and a mother, and nature bears witness in every climate and every country, to the singleness and uniformity of those characters. I have known and proved them in the hovel of the slave, and in the wigwam of the Chippewa. But Sally Freeman has been intemperate. The white man

enslaved her ancestors of the one race, exiled and destroyed those of the other, and debased them all by corrupting their natural and healthful appetites. She comes honestly by her only vice. Yet when she comes here to testify for a life that is dearer to her than her own, to say she knows her own son, the white man says she is a drunkard! May Heaven forgive the white man for adding this last, this cruel injury to the wrongs of such a mother! Fortunately, gentlemen, her character and conduct are before you. No woman has ever appeared with more decency, modesty, and propriety than she has exhibited here. No witness has dared to say or think that SALLY FREEMAN is not a woman of truth. Dr. CLARY, a witness for the prosecution, who knows her well, says, that with all her infirmities of temper and of habit, Sally "was always a truthful woman." The Roman Cornelia could not have claimed more. Let then the stricken mother testify for her son.

"I ask not, I care not—if guilt's in that heart,
I know that I love thee, whatever thou art."

The learned gentlemen who conduct this prosecution have attempted to show that the Prisoner attended the trial of Henry Wyatt, whom I defended against an indictment for Murder, in this Court, in February last; that he listened to me on that occasion, in regard to the impunity of crime, and that he went out a ripe and complete scholar. So far as these reflections affect me alone, they are unworthy of an answer. I pleaded for Wyatt then, as it was my right and my duty to do. Let the Counsel for the People prove the words I spoke, before they charge me with Freeman's crimes. I am not unwilling those words should be recalled. I am not unwilling that any words I ever spoke in any responsible relation, should be remembered. Since they will not recall those words, I will do so for them. They were words like those I speak now, demanding cautious and impartial justice; words appealing to the reason, to the consciences, to the humanity of my fellow men; words calculated to make mankind know and love each other better, and adopt the benign principles of Christianity, instead of the long cherished maxims of retaliation and revenge. The creed of Mahomet was promulgated at a time when paper was of inestimable value, and the Koran teaches that every scrap of paper which the believer has saved during his life, will gather itself under his feet, to protect them from the burning iron which he must pass over, while entering into Paradise. Regardless as I have been of the unkind construction of my words and actions by my cotemporaries, I can say in all humility of spirit, that they are freely left to the ultimate, impartial consideration of mankind. But, gentlemen, how gross is the credulity implied by this charge! This stupid idiot, who cannot take into his ears, deaf as death, the words which I am speaking to you, though I stand within three feet of him, and who even now is exchanging smiles with his and my accusers, regardless of the deep anxiety depicted in

your countenances, was standing at yonder post, sixty feet distant from me, when he was here, if he was here at all, on the trial of Henry Wyatt. The voice of the District Attorney reverberates through this dome, while mine is lost almost within the circle of the bar. It does not appear that it was not that voice that beguiled the maniac, instead of mine; and certain it is, that since the Prisoner does not comprehend the object of his attendance here now, he could not have understood any thing that occurred on the trial of Wyatt.

Gentlemen, my responsibilities in this cause are discharged. In the earnestness and seriousness with which I have pleaded, you will find the reason for the firmness with which I have resisted the popular passions around me. I am in some degree responsible, like every other citizen, for the conduct of the community in which I live. They may not inflict on a Maniac the punishment of a Malefactor, without involving me in blame, if I do not remonstrate. I cannot afford to be in error, abroad and in future times. If I were capable of a sentiment so cruel and so base, I ought to hope for the conviction of the accused; for then the vindictive passions, now so highly excited, would subside, the consciences of the wise and the humane would be awakened, and in a few months, the invectives which have so long pursued me, would be hurled against the Jury and the Court.

You have now the fate of this Lunatic in your hands. To him as to me, so far as we can judge, it is comparatively indifferent what be the issue. The wisest of modern men has left us a saying, that "the hour of death is more fortunate than the hour of birth," a saying which he signalized by bestowing a gratuity twice as great upon the place where he died as upon the hamlet where he was born. For ought that we can judge, the Prisoner is unconscious of danger and would be insensible to suffering, let it come when it might. A verdict can only hasten, by a few months or years, the time when his bruised, diseased, wandering and benighted spirit shall return to Him who sent it forth on its sad and dreary pilgrimage.

The circumstances under which this trial closes are peculiar. I have seen capital cases where the parents, brothers, sisters, friends of the accused surrounded him, eagerly hanging upon the lips of his advocate, and watching in the countenances of the Court and Jury, every smile and frown which might seem to indicate his fate. But there is no such scene here. The Prisoner, though in the greenness of youth, is withered, decayed, senseless, almost lifeless. He has no father here. The descendant of slaves, that father died a victim to the vices of a superior race. There is no mother here, for her child is stained and polluted with the blood of mothers and of a sleeping infant; and "he looks and laughs so that she cannot bear to look upon him." There is no brother, or sister, or friend here. Popular rage against the accused has driven them hence, and scattered his kindred and people. On the other side I notice the aged and venerable parents of VAN NEST, and his surviving children, and all around are mourning and sympathizing

friends. I know not at whose instance they have come. I dare not say they ought not to be here. But I must say to you that we live in a Christian and not in a Savage State, and that the affliction which has fallen upon these mourners and us, was sent to teach them and us mercy and not retaliation; that although we may send this Maniac to the scaffold, it will not recall to life the manly form of VAN NEST, nor reanimate the exhausted frame of that aged matron, nor restore to life, and grace, and beauty, the murdered mother, nor call back the infant boy from the arms of his Savior. Such a verdict can do no good to the living, and carry no joy to the dead. If your judgment shall be swayed at all by sympathies so wrong, although so natural, you will find the saddest hour of your life to be that in which you will look down upon the grave of your victim, and "mourn with compunctious sorrow" that you should have done so great injustice to the "poor handful of earth that will lie mouldering before you."

I have been long and tedious. I remember that it is the harvest moon, and that every hour is precious while you are detained from your yellow fields. But if you shall have bestowed patient attention throughout this deeply interesting investigation, and shall in the end have discharged your duties in the fear of God and in the love of truth justly and independently, you will have laid up a store of blessed recollections for all your future days, imperishable and inexhaustible.

MR. VAN BUREN, (the Attorney General) then addressed the Jury in substance as follows:

IF THE COURT PLEASE,—*Gentlemen of the Jury:*

It did not need the very able argument that has been submitted to you by the prisoner's counsel, to remind the prosecution of the great disadvantage the people have labored under in conducting this case. The learned gentleman who has just addressed you, has not only brought to the task his usually great ability, but throughout the trial, as well as in his closing argument, has seemed to believe, and I fear has impressed the Jury with the belief, that his own character and position, rather than those of the prisoner, are involved in your decision. I beg you to dismiss any such idea. That distinguished citizen has spent the larger portion of his life amongst you; he is your neighbor and friend; and if he were upon trial, it would better become a stranger like me, and be more agreeable to my inclinations, to enter a *nolle prosequi*, than press for a conviction.

It is a gratifying feature in our institutions, that an ignorant and degraded criminal like the prisoner, who has spent a large portion of his life in prison; vicious and intemperate in his habits; of a race socially and politically debased; having confessedly slaughtered a husband, wife, son and mother-in-law, composing one of the first families in the State; and arrested with but one cent in his pocket, can enlist in his defence the most eminent counsel in the country, bring upon the witness' stand Professors of the highest distinction in their departments of science, members and trustees of churches,

and even pious divines. It is particularly gratifying to those whose official duty requires them to participate in this prosecution, because it assures them that there is no danger that the slighest injustice can be done to the prisoner from an inability to secure friends and testimony, at any distance or at any cost. It is also gratifying to those who desire to see an impartial administration of justice, that the prisoner has been able to select a jury under circumstances that so clearly forbid the idea that his rights are endangered by passion or prejudice. Three of the jurors have been selected from a panel which were present during the whole preliminary proceedings in this case, and which was exhausted without the exercise of a single peremptory challenge; and from the thirty talesmen who had been then summoned, the requisite number to complete the panel have been chosen, using only nine out of the twenty peremptory challenges which the law allows him. Every thing thus indicated that a calm and dispassionate examination would be given to a case which had once deeply and naturally excited the community; that at all events, however imperfectly the rights of the people might be protected or presented, the strong public sympathy which always turns its back upon the dead and its face towards the living, and the sturdy independence which stands by the weak and helps the helpless, had attracted to the prisoner and enlisted in his cause an unsurpassed combination of kind feeling, rare intellect, extensive learning, and vast acquirements.

That the prisoner at the bar slew John G. Van Nest at the time and in the manner charged in the indictment, is not now (said Mr. V. B.) a fact in dispute. His defence is made to rest on the ground of insanity. And there is to me something so repulsive in the idea of trying an insane man—so horrid is it to contemplate the possibility of holding a man responsible for the commission of an act which he could not understand or avert—that I gladly availed myself of the request of Mr. Seward, to visit the prisoner with him before the preliminary enquiry, that I might at least be satisfied of the propriety of my own conduct. I did so with the hope of feeling authorized to postpone this trial; and in a short intercourse, I became perfectly convinced that at that time the prisoner at the bar was SANE. I did say, as has so often been repeated, that if I believed I could not detect or suspect insanity in an individual when apprised of it beforehand, at liberty to converse freely with him, and having my attention drawn to the peculiarity of his derangement, I would resign the office I hold. I repeat the assertion now; and I will only add, that nothing in the course of this trial has in any degree weakened my conviction of the prisoner's sanity. And that he was sane on the 12th of March, when the murder was committed, is not only established by the testimony, but laying out of view the murder itself, there is not a particle of evidence of any act or declaration on his part for several weeks before the tragedy, during its commission, or for several days subsequent, on which a suspicion of insanity could be raised. His minute history has been furnished by the defence from nursing childhood to the sixth of

this month—the history of a well known man, born and brought up here, where he is on trial. But the history is silent when it approaches the date of this fearful transaction. It glides almost without touching, over the days of preparation and the sad night of performance; it carefully avoids the darkness and day of flight; it does not indulge us with the interview with the De Puys in Oswego, friends and connections though they be of the prisoner; it skips from the perjured John De Puy in December, and the friendly black Adam Gray in January, over to the theological and scientific conversations in the jail after the arrest, when the defence of insanity was interposed or determined on. What means this great chasm? Why is the testimony so barren while the delirium must have been most intense? Why is not Mrs. Willard called, with whom the prisoner lived after he quit Adam Gray's? Why has not Mary Ann Newark, with whom he lived at the time of the murder, and for ten days before, been able to state some careless remark, some odd gesture, some unwillingness or inability to sleep, arising from insanity, ill health, or intemperance? Why has not some witness been called by the defence, who spoke with the prisoner within ten days of the crime? Where are the Oswego De Puys, to whom Freeman fled, with whom he sought refuge the day after the murder, and who turned him out of the house suspecting he had stolen the horse? [Testimony of Amos, p. 205.] This vacuum has been supplied by the prosecution, and a future recurrence to it will show that it all tends with unerring certainty to one point—the guilt of the prisoner.

The preliminary proceedings in the case have established nothing except that the prisoner should be tried. It is not correct to call the interposition by the prisoner's counsel of the objection of insanity, a plea of inanity. The prisoner had not then been arraigned, and the objection taken was not to the indictment, but to a trial. We have, therefore, consumed a fortnight in determining whether the prisoner shall be tried; in the course of which nearly all the testimony we now have, has been detailed to another jury to satisfy them that the prisoner was insane, when they were called on to determine the state of his mind. They were not able to come to such a conclusion. He has since been arraigned, plead NOT GUILTY, the evidence again detailed before you, and the defence insisted on, that he was insane on the 12th of March last, when the murder was committed. The extraordinary doctrines put forth upon the subject of insanity in the course of this trial; the wonderful effort made to procure the acquittal of this prisoner; the extreme length to which the proceedings have been protracted—all conspire to excite the public mind, and to render the result to which you shall come, a matter of immense moment. The defence of insanity differs from all others in this—that the declarations and acts of the prisoner constitute this defence. In every other criminal case they are not even admissible in evidence. And the peculiarity of this case is, that the testimony on which insanity is predicated, so far as it comes from scientific or credible witnesses,

consists of the acts and declarations of the prisoner after the first Monday of June last, when he had been arrested for this crime, identified by Van Arsdale, (who, being alive, must secure his conviction,) and had interposed the defence of insanity!

William Freeman was born and brought up in Auburn. For five years prior to last September he was in the Auburn State Prison. The medical gentlemen who are his witnesses testify that he has *dementia*, which is a form of insanity gradual in its approaches. John De Puy swears he was crazy in prison. He resided in Auburn nearly his entire life. How then does it happen that every important fact on which the jury are asked to believe that he was insane on the 12th of March last, should have occurred since the first Monday of June, and under the circumstances I have stated? I ask you, without seeking to cast the slightest suspicion on the counsel for the prisoner, whether these considerations do not require you to scrutinize strictly a defence which can always be manufactured easily, and which comes to you in this instance under such extraordinary circumstances? An atrocious slaughter has been perpetrated; the instrument by which it was effected is in your hands, to be disposed of, and it is unnecessary for me to say to you that your own safety, public justice, the existence even of law and government, may be affected by your action.

WAS THE PRISONER INSANE ON THE 12th OF MARCH LAST?

Insanity, as constituting legal incompetency or irresponsibility, must be within the comprehension of any ordinary man of fair capacity. I deny and resist the theory of the Professors, who have made insanity their peculiar study, that an ordinary man can't comprehend it—a theory which substitutes the testimony of a physician, as to legal responsibility, for the law of the land—expels the Judge from the bench and the Jury from the box—overturns the government, and places the Property, Liberty, and Life of any citizen in the hands of the Trustees and Superintendents of Lunatic Asylums.

No legal act can be done by a person of unsound mind. Does an individual execute a deed? his legal capacity is disputed, and medical gentlemen deny it. Does he make a will? his dissatisfied connections seek to set it aside. Every peculiarity that he ever manifested, every odd remark, thoughtless act, singular gesture, is appealed to, to establish his incompetency; and medical gentlemen not only pronounce their opinion of the state of his mind, but they insist that ordinary observers are incapable of forming an opinion upon it. An individual commits a crime. If he is not of sound mind, he is irresponsible; and medical men in all these cases claim to render the verdict and pronounce the judgment. The jury thus see the infinite extent to which a surrender of their individual judgments might lead, and the absolute control of Property, Liberty, and Life, that might thus be transferred to men of scientific pursuits. The security of all these great interests rests on the trial by jury, and our institutions are founded on the capacity of jurors to determine intelligently every question presented to them.

Criminal irresponsibility is a question of law, not of medicine. Were it otherwise—did the detection of offenders or the prevention of crime depend upon medical skill, our police should be composed of Physicians and Nurses. The moral insanity which is induced by a predominance of the passions, and which irresistibly impels to the commission of crime, such as Pyromania, Cleptomania, Erotomania, Nymphomania, Homicidalmonomania, must be detected by the tongue and the pulse. Our families cannot walk the streets in safety till they have been swept by a squadron of Doctors; and if the punishment of crime is to be determined by medical rules, the Professors should sit upon the bench and fill the jury box. This prosecution is unsuitably conducted. The Executive of the State should have sent the Surgeon General instead of the Attorney General to assist at this trial. But no, gentlemen! the law allows no such absurdities. You receive the testimony of medical men. You receive their opinions and hear the grounds on which they rest. The immense latitude which has been allowed them on this trial, has given you abundant opportunities of testing their skill, judgment and information; and with the aid of these, and with a statement of the law in regard to responsibility as it has stood for ages, with safety to the people and security to the rights of the criminal, you determine for yourselves the guilt or innocence of this prisoner. And now, after all the efforts that have been made to establish the immunity of the prisoner, by calling clergymen to testify that he has no moral sense—that he is not morally responsible; medical professors to prove that he ought not to be punished—that they consider him diseased with insanity; lawyers to swear that he knows no more than a dumb beast, and cannot distinguish between killing a horse and a man; and a prison keeper to prove that he did not punish him because he did not consider him responsible, let us turn to the LAW to see what state of facts the prisoner *must* prove, before you are authorized to acquit this frightful homicide of being a wilful murderer. And let me stop a moment to say that those who claim that vast improvements have been made in the science of insanity; that the early tests of insanity were barbarous and inhuman; that the law now falls behind science in determining irresponsibility; and that, therefore, Juries should take the law from the lips of medical witnesses on the stand, in preference to the law-givers of the Constitution, speak, as it seems to me, without examination or reflection, and without due knowledge of the enlightened wisdom, learning and humanity they condemn, or of the fearful hazards they propose to encounter.

Who may, and who may not kill, it concerned society to have decided as far back as the time of Cain and Abel; and whilst we concede that vast improvement has been made in the treatment of the insane, a reference to the simple and early tests of legal irresponsibility, under which well ordered communities have existed to this time, will show that no other has ever been furnished by the successive wisdom of ages or the humanizing spirit which has waited on this wisdom and pervaded criminal legislation. Under this

test, too, uniformly laid down by English and American judges and commentators, prisoners indicted for the highest crimes have been acquitted. Hadfield, who shot at George III in 1800, and was indicted for high treason, was acquitted. Oxford, who shot at the Queen in 1840, and was indicted for high treason, was acquitted. McNaughton, who killed Mr. Drummond, Secretary to Sir ROBERT PEEL, in 1843, was acquitted. In each case the defence was insanity. The eloquence, therefore, that inveighs against the barbarity of our laws; against the severity of Hale and Blackstone; the oppression of our Courts and of those of Great Britain; and calls upon us to reject the tried experience and security of law, and cleave to the subtleties of the Asylum, does not spring from past evil or danger, and finds no justification in the history of English jurisprudence. So far from it, a student or lover of the principles of justice, finds in it every thing to confirm his preference of the enlightened liberty of the old common law over the vagaries of the new schools.

What, then, is the unsoundness of mind and memory which renders the subject of it incompetent and irresponsible? In a criminal case, it is an INCAPACITY TO DISTINGUISH BETWEEN RIGHT AND WRONG IN REGARD TO THE PARTICULAR ACT COMMITTED, OR AN INABILITY FROM DISEASE TO RESIST THE COMMISSION OF THE ACT. This is the earliest and latest definition of insanity, in the legal understanding of the term, and covers every case where a party is excused in law from the responsibility of his acts. This defence is to be established beyond reasonable doubt by satisfactory evidence. The law presumes a person to be sane till his insanity is proved.

Let us advert to the authorities. Not to Esquirol, Pritchard, Ray, Pinel; but to COKE, HALE, BLACKSTONE, KENYON, DENMAN, MAULE, TYNDALL, VAN NEST, VERPLANCK, and to other luminaries of the law, under whose administration and teaching the public peace and happiness have reposed securely for centuries. Lord COKE classifies irresponsible persons as follows, and Dr. HUN testifies that while the classification might perhaps be improved, it covers every species of insanity known to modern science. He says:

"*Non compos mentis* is of four kinds: 1. Idiota, which from his nativity by a perpetual infirmity is *non compos mentis*. 2. He that by sickness, grief or other accident, wholly loses his memory and understanding. 3. A lunatic that hath sometimes his understanding and sometimes not, and therefore he is called non compos mentis, so long as he hath not understanding. 4. Lastly, he that for a time depriveth himself, by his own vicious act, of his memory and understanding, as he that is drunken." [1 Black. Com. 303.]

Lord Hale says: "But it should be observed that every person at the age of discretion is presumed sane, unless the contrary is proved; and if a lunatic has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval, unless it appears to have been committed in the time of his distemper." [1 Hale, 33, 34.]

"An Idiot is a fool or madman from his nativity, and one who never has lucid intervals: and such a one is described as a person that cannot number twenty, tell the days of the week, does not know his own father or mother, his own age &c.; but these are mentioned as instances only, for whether idiot or not, is a question of fact for the jury."

Lord Hale says: [1 Hale, 34.] "One who is *surdus et mutus a nativitate*, is in presumption of law an idiot, and the rather because he has no possibility to understand what is forbidden by law to be done, or under what penalties; but if it appear that he has the use of understanding, which many of that condition discover by signs, to a great measure, then he may be tried and suffer judgment and execution, though great caution should be used in such a proceeding."

Blackstone says: [4 Black. Com. 24.] "The second cause of 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 be easily adapted, also, to the former, is, that '*furiosus furore solum punitur.*' 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. [1 Hale 26.] And with a careful regard for the rights of prisoners, he says: 'Also, if a man in his sound memory commits a capital offence, and, before arraignment for it he becomes mad, he ought not to be arraigned for it, because he is not able to plead to it with that advice and caution that he ought. And, if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non-sane memory, execution shall be stayed: for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution. Indeed, in the bloody reign of Henry the VIII, a statute was made which enacted, that if a person being *compos mentis*, should commit high treason, and, after, fall into madness, he might be tried in his absence, and should suffer death as if he were of perfect memory.' But this savage dan inhuman law was repealed by the Statute. [1 & 2. Ph. & M. ch. 10.] 'For,' as it is observed by Sir Edward Coke, 'the execution of an offender is for example, *ut pœna ad paucos, metus ad omnes perveniat*: but so it is not when a mad-man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be of no example to others.'"

In James Hadfield's case, tried in the year 1800, the counsel for the prisoner, (the late Lord Erskine,) in his very able address to the jury, put the case as one of a species of insanity in the nature of a *morbid delusion* of the intellect, and admitted it was necessary for them to be satisfied that the act in question was the immediate, unqualified offspring of the disease.

And Lord Kenyon held: "That as the prisoner was deranged immediately before the offence was committed, it was improbable that he had recovered his senses in the interim. And although, were they to run into nicety, proof might be demanded of his insanity at the precise moment when the act was committed, yet there being no reason for believing him to have been at that period a rational and accountable being, he ought to be acquitted." [1 Russ. on Crimes, 13.] Under this charge, Hadfield was acquitted.

In the recent trial, in 1840, of Oxford for shooting at the Queen, Lord Denman, C. J., told the jury: "Persons *prima facie* must be taken to be of sound mind till the contrary is shown. But a person may commit a criminal act and not be responsible. If some controlling disease was in truth the acting power within him, which he could not resist, then he will not be responsible. It is not more important than difficult to lay down the rule by which you are to be governed. On the part of the defence it is contended that the prisoner was *non compos mentis*, that is, (it has been said,) unable to distinguish right from wrong, or, in other words, that from the effect of a diseased mind, HE DID NOT KNOW AT THE TIME THAT THE ACT HE DID WAS WRONG. Something has been said about the power to contract and to make a will; but I think that those things do not supply any test. The question is, whether the prisoner was laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious, at the time he was committing the act, that it was a crime." [King vs. Oxford, 9 Car. & Payne, 525.] And under this charge Oxford was acquitted.

In Alison's principles of the Criminal Law of Scotland, [p. 654.] (and there is no difference between the law of England and the law of Scotland, with reference to insanity,) it is said: "That to amount to a complete bar of punishment, either at the time of committing the offence or of the trial, the insanity must have been of such a kind as to entirely deprive the prisoner of the use of reason, *as applied to the act in question*, and the knowledge that he was doing wrong in committing it. If, though somewhat deranged, he is able to distinguish right from wrong *in his own case*, AND TO KNOW THAT HE WAS DOING WRONG IN THE ACT WHICH HE COMMITTED, he is liable to the full punishment of his criminal act."

Justice VAN NESS says: "In all cases where the act of a party is sought to be avoided on the ground of his mental imbecility, the proof of the fact lies on him who alleges it; and until the contrary appears, sanity is to be presumed. This is taken for granted in all the elementary writers, and in all the adjudged cases, both in law and equity. The rule has its qualifications, one of which is, that after a general derangement has been shown, it is then incumbent on the other side to show that the party who did the act was sane at the very time when the act was performed. To say that sanity is

not to be presumed until the contrary is proved, is to say that insanity or fatuity is the natural state of the human mind." [5 John. R. 158, Jackson vs. Van Dusen.] See the authorities quoted in this case by Van Ness, J., in delivering the opinion of the court.

The acquittal of Daniel McNaughton for the murder of Mr. Drummond, on the ground of insanity in March, 1843, gave rise to a discussion in the House of Lords, and the following questions of law were propounded to the Judges in relation to the law respecting crimes committed by persons afflicted with insane delusions.

1. What is the law respecting alleged crimes, committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons; as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with the view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

2. What are the proper questions to be submitted to the jury when a person alleged to be afflicted with insane delusion, respecting one or more particular subjects or persons, is charged with the commission of a crime, (murder, for example,) and insanity is set up as a defence?

3. In what terms ought the question to be left to the jury as to the prisoner's state of mind when the act was committed?

4. If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?

5. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, *but who was present during the whole trial, and the examination of all the witnesses*, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was laboring under any, and what delusion at the time?

Mr. Justice Maule, amongst other things, stated;in reply, that, "to render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as to render him INCAPABLE OF KNOWING RIGHT FROM WRONG."

Lord Chief Justice Tyndall, in delivering the opinion of all the judges, with the exception of Mr. Justice Maule, held as follows, and in answer to the second and third questions, said: "As these two questions appear to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases, that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction, and that to establish a defence on the ground of insanity, it must be clearly proved, that,

at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that HE DID NOT KNOW HE WAS DOING WHAT WAS WRONG. The mode of putting the latter part of the question to the jury on these occasions, has generally been, whether the accused, at the time of doing the act, knew the *difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury*, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's KNOWLEDGE OF RIGHT AND WRONG IN RESPECT TO THE VERY ACT WITH WHICH HE IS CHARGED. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; *whereas, the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it.* If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he WAS DOING AN ACT THAT WAS WRONG; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

To the fourth question, they replied, that "the answer must of course depend on the nature of the delusion; but making the same assumption we did before, namely: that he labors under such partial delusion, only, and is not in other respects insane, we think he must be considered in the same situation, as to responsibility, as if the facts with respect to which the delusion exists were real. For example: if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. *If his delusion was, that the deceased had inflicted a serious injury to his character and fortune*, AND HE KILLED HIM IN REVENGE FOR SUCH SUPPOSED INJURY, HE WOULD BE LIABLE TO PUNISHMENT."

In regard to the testimony of medical men, they say: "We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible; but where the facts are admitted or not disputed, and the question becomes substantially one of science, only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a

matter of right." [Case reported 47 Eng. Com. Law, 129, Note to Reg. vs. Higginson.]

Let us turn now for a moment to the rule laid down by our own courts to test the sanity of a testator. In 26th Wendell, 265, the validity of Alice Lispenard's will came before the Court of Errors on appeal. The Surrogate of New York, in giving his opinion on the validity of the instrument, thus describes her: "It is unnecessary to go back to the infancy of Alice, or to consider her condition before she attained her eighth year. Anterior to that year, the difference between her and her companions of a similar age, was not so great and had not yet manifested itself so strongly as it did at a later period. It is no uncommon thing to see children whose looks in early life are heavy and indicative of dullness and stupidity, prove afterwards to be persons of excellent understandings.

"Alice was possessed of the five natural senses which are generally regarded as the inlets of knowledge. She had acquired the faculty of speech. That requires some degree of mind and memory; and hopes were entertained by her parents that she was capable of improvement, and of receiving at least the ordinary rudiments of instruction. A teacher in the house was provided, under whose charge she was placed. The attempt of instructing her was commenced, and was no doubt anxiously pursued for some time, when, to the great grief of her parents, the experiment failed; and the extraordinary and mortifying fact was disclosed, that Alice was incapable of being taught to read, and much less to write. The utmost length to which she ever progressed, was to spell words of two syllables; and it is very remarkable, that when, more than forty years afterwards, the attempt was renewed by Mrs. Stewart, the result was attended with no better success, and the same number of syllables again proved an insuperable barrier—the *ne plus ultra* of advancement. Her parents, perceiving that all their efforts to impart instruction were unavailing, and only had the effect of rendering her unhappy, were finally compelled to abandon the attempt as altogether hopeless. From the school in the house, she went with her sister a quarter or two to a school in Dutch street, more, probably, with a view of accompanying her sister and accustoming her to female society, than with any expectation of being instructed.

"At this epoch of her life, her mental defects became apparent and striking; and she passed from adolescence to womanhood, possessing the body of an adult and the mind of a child. Mrs. Satterthwaite, who had frequent opportunities of seeing her, and who, being older, was capable of observing and judging, describes Alice, when between twelve and fifteen years of age, as having a vacant expression of countenance; a foolish manner of holding her head; dribbling at the mouth; a silly laugh when spoken to, and generally answering in monosyllables; requiring a person to attend her; unable to take care of herself, and washed and put to bed like a child; incapable of

being instructed, and never joining with the rest of her children in their sports and amusements.

"William Baldwin, who lived with her father ten years, and who during this period saw Alice every day, confirms this description, and adds, that she knew nothing of the value of money; had seen the experiment tried, when she preferred a sixpence to a dollar, and that, too, when she was between sixteen and eighteen years of age. She was generally crying, and was voracious and immoderate in her eating and drinking.

"Mrs. Elizabeth Stanton, who was a companion of the oldest daughter, Helen, and who was about twelve years older than Alice, represents her appearance as that of an idiot; and that, as she grew up, she was different from other children, never joining them in their little plays and diversions; was of a sullen and quarrelsome disposition; would get angry and cry for the slightest cause; and, whether pleased or the contrary, exhibiting pretty much the same expression of countenance."

Yet the will executed by this person was upheld by the Court of Errors. The accomplished Verplanck, one of the first writers and scholars of our country, in delivering his opinion in favor of sustaining the will, and in declaring the standard of a sound mind which the law had fixed, said:

"Again, taking mankind such as observation shows us human nature to be, can any other than this be a safe, prudent, just or politic rule? When we observe the strange incongruities of human nature; the astonishing mixture of sagacity and weakness in the same mind; the 'fears of the brave and the follies of the wise;' when literary biography shows us the discoverers of truth and the teachers of wisdom, like Newton and Pascal, suffering under the variable weather of the mind, the flying vapors of incipient lunacy; when in ordinary life it often happens that the most sagacious and prudent in many of the affairs of business, are yet, in some points of domestic conduct or some one matter of opinion or action, guilty of absurdities such as the feeblest minds could not commit; one might almost adopt the startling conclusion of Dr. Haslam, who, after years of professional observation of the phenomena of mental disease, when examined in the remarkable case of Miss Bagster, in answer to the customary question—'Was Miss B., of sound mind?'—replied: 'I never knew any human being who was of sound mind.' So, again, if we look around our own circle of acquaintances, every one must have known aged, blind or infirm persons, unfitted, by the state of their minds or of their senses, for the management of any affairs, and from their necessary seclusion from the concerns of life, entertaining false notions and mixing up the past with the present. Yet these, and such as these, may, by the aid of their friends and families, upon whom they have a right to rely, and with a general understanding of their own intent and the effect of their acts, make wills, conveyances and other dispositions of property, which could not be set aside without gross and manifest hardship and injus-

tice. To establish any standard of intellect or information beyond the possession of reason in its lowest degree, as in itself *essential* to legal capacity, would create endless uncertainty, difficulty and litigation; would shake the security of property, and wrest from the aged and infirm that authority over their earnings or savings, which is often their best security against injury and neglect. If you throw aside the old common law test of capacity, then proofs of wild speculations, or extravagant and peculiar opinions, or of the forgetfulness or the prejudices of old age, might be sufficient to shake the fairest conveyance or impeach the most equitable will. The law, therefore, in fixing the standard of positive legal competency, has taken a low standard of capacity; but it is a clear and definite one, and therefore wise and safe. It holds (in the language of the latest English commentator) that 'weak minds differ from strong ones only in the extent and power of their faculties: but unless they betray a total loss of understanding, or idiocy or delusion, they cannot properly be considered unsound.'" [Shelford on Lunacy, p. 39.]

Such is the language of Senator Verplanck in this celebrated case; and he precedes it by an elaborate review of English and American cases which, he claims, confirm his views. But it is with responsibility for criminal acts that you have to do; and it will not be denied that an individual who may be incompetent to perform a legal act, may yet be responsible for the commission of Crime.

What then is the inquiry that this review of adjudged cases, and reference to established authorities, calls upon you to make in this case? The simple question for you to determine is, HAD THE PRISONER, WHEN HE KILLED JOHN G. VAN NEST, SUFFICIENT CAPACITY TO JUDGE WHETHER IT WAS RIGHT OR WRONG SO TO DO? And if he had, DID ANY DISEASE DIVEST HIM OF CONTROL OVER HIS ACTIONS?

You are not called upon to determine the extent or nature of his information or acquirements. It is not material what are his views on the subjects of Religion, Morality or Law. He may deny the existence of a Supreme Being—reject Revelation and believe that the Son of God was a Man; he may think he was wrongfully imprisoned—that he ought to be paid for the time he has lost and the labor he has performed; he may make unsuccessful attempts to obtain pay; failing of this, he may levy War on Society and kill the first man he meets;—and yet HE IS NO LESS AMENABLE TO PUNISHMENT.

Ignorance of no kind excuses. Mr. Hopkins errs in supposing that "the extent of information is the measure of responsibility." [p. 246.] A criminal may never read or hear of a Statute; nevertheless, public safety requires that he should be punished for a violation of it, if he knows the act he is committing is wrong. In the vast majority of cases it is the ignorant and irreligious that commit crimes. Dr. Fosgate errs in thinking that "the Law could not impose any rules or regulations upon the human constitution as it is given by the Almighty." [p. 233.] His theory happens to overturn the

precise office of all government, Human and Divine. To borrow an illustration of the Doctor, "a dog in a sound state of mind" ought not so entirely to overlook the very end for which governments were instituted.

This prisoner may really believe that when he was struck with a board, his hearing was knocked down his throat; he may believe he can read and count, when he cannot; (this, I presume every one believes who reads and counts inaccurately;) he may think Van Nest said to him "if you eat my liver, I'll eat yours;" he may think Jesus Christ is a man whom he met at Sunday School; he may have killed the Van Nest family for revenge, plunder, amusement, or for no conceivable cause; he may be deaf, ignorant, morally insensible, eccentric, willful;—still by the Law he *must* be punished, if HE VOLUNTARILY DID WHAT HE KNEW TO BE WRONG. It is not accomplishment, refinement, morality or religion, but accountability that the Law regards. The Supreme Ruler of the Universe holds to the same rule. Neglected opportunities, willful ignorance, deadened moral sense, and inveterate depravity, will avail as little hereafter as here, in saving sinners from responsibility. The only inquiry will be—HAD THEY CAPACITY TO KNOW THE RIGHT, AND PHYSICAL ABILITY TO PURSUE IT.

Let us apply this test to the Prisoner's case.

SANITY is the natural state of Man. The Law presumes a party to be sane; and we having proved the commission of the acts charged in the indictments, the Prisoner must be convicted unless he has satisfied you beyond all reasonable doubt, that when they were committed he was irresponsible.

We are asked what motive the Prisoner had in committing these murders. We answer, frankly, that we cannot say. If you were bound to find his motive, on oath, although the testimony would incline you to the belief that his purpose was revenge, you would not in a case of life and death be willing so to find. The testimony shows that he was five years imprisoned on a conviction for Larceny, as he claimed wrongfully; that he refused to work on that ground; that on coming out of prison last September, he inquired for Jack Willard, who was a witness against him on his trial, [p. 237]; and that he went several times to a Justice of the Peace to get warrants for those who swore against him. Shortly before the murder he made several efforts to get redress for having been sent to prison. He went two days before to Esquire Bostwick. [p. 291.] The Saturday or Monday before, he went to Esquire Paine. [p. 257.] To him he complained of his inability to get work. He had been on the previous Monday to the house of Van Nest, who refused to employ him. [p. 199.] He was well acquainted with the premises, having previously lived on them. [p. 203.] The horse, for the stealing of which he had been convicted, was stolen of Martha Godfrey. He visited her just before the murder and inquired in regard to it—said he had been wrongfully imprisoned for stealing it, and wanted a settlement. There is no doubt that he supposed that Van Nest was concerned in his conviction. Nathaniel Hersey, a Negro companion of Prisoner, swears

that the Prisoner told him about a week before the murder, that he had found the persons who swore him into prison, and that he was going to kill them—THAT THEIR NAME WAS VAN NEST. [p. 195.] Hersey told this the same night to Mr. Stephen Titus, [p. 196]; also to John De Puy. [p. 241.] The day the Prisoner was brought to the Jail, he told Ethan A. Warden that he KILLED THE VAN NESTS BECAUSE THEY SWORE HIM INTO PRISON. [p. 211.] He told Aretus A. Sabin the same thing, the same day. [p. 332.] And after the murder he rode into the widow Godfrey's yard, as he has frequently confessed; but there being lights there and being wounded, he made off. [pp. 235, 213.] He was drunk that day and had drank a pint of liquor the afternoon of the murder. [p. 267.]

Is it difficult to believe, when we know he was thus maddened by liquor, filled with the belief that Van Nest had "swore him into prison," and bent on redress, that he gave true answers to Dr. Bigelow and Esq. Bostwick immediately on his arrest? They asked why he killed that family. To the former he said: "Well, to see if I could'nt get revenge, or get some pay for being in State's Prison about a horse; and I did'nt do it." And to the latter—"I couldn't get any satisfaction, and I meant to be revenged." Shakspeare, who knew the human heart as well as if he'd made it, paints a money-lending Jew, who, indignant at the insults and oppressions practiced on his caste, prefers the taking of human life to the re-payment of three thousand ducats. Shylock, when asked if he will take the pound of flesh, and what that's good for, says: "To bait fish withal: if it will feed nothing else, it will feed my revenge. He hath disgraced me. * * * * And what's his reason? I am a Jew. Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions? Fed with the same food—hurt with the same weapons—subject to the same diseases—healed by the same means—warmed and cooled by the same winter and summer as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die? And, if you wrong us, shall we not revenge? If we are like you in the rest, we will resemble you in that. If a Jew wrong a Christian what is his humility? Revenge. If a Christian wrong a Jew, what should his sufferance be by Christian example? Why, Revenge." And again,

> "You'll ask me, why I rather choose to have
> A weight of carrion flesh, than to receive
> Three thousand ducats: I'll not answer that:
> But say it is my humor; Is it answer'd?
> What if my house be troubled with a rat,
> And I be pleased to give ten thousand ducats
> To have it ban'd? What, are you answer'd yet?
> Some men there are, love not a gaping pig;
> Some, that are mad if they behold a cat;
> * * * * * * Now for your answer:
> As there is no firm reason to be render'd
> Why he cannot abide a gaping pig;

Why he a harmless, necessary cat;
* * * * * * * * * * * * *
So can I give no reason, nor I will not;
More than a lodg'd hate, and a certain loathing
I bear Antonio, that I follow thus
A losing suit against him. Are you answer'd?"

This Prisoner had a reason for slaughtering this family. His threat, preparation, lying in wait, selection of them, avoidance of others,—all indicate a fell purpose to destroy Van Nest. I believe his motive was revenge. It may have been plunder. He may have had confederates. This family was known to be rich—their residence retired. The blow given him by Mrs. Wyckoff caused his flight; and he had neither time nor strength to rob. It is of no earthly consequence, except to satisfy an idle curiosity, what his motive was. No adequate motive, of course, existed. The Rev. Dr. Austin thinks Freeman not sound, because he can "assign no motive adequate to a sound mind for the commission of this crime." Was there ever a Murderer that could?

Henry Green was convicted in July of last year, of murder in Rensselaer county. He was a young man of good family and of property; and had married a lovely girl to whom he professed the most ardent attachment. He poisoned her with arsenic in pills which he had procured for her to relieve a slight indisposition. He put arsenic in her tea, coffee, toast, water, broth, soup, and every thing she drank for forty-eight hours, till she died. This occurred within a week after the marriage. Not the slightest difference ever occurred between them. He was proved to have burst into tears when she began to manifest the effects of the poison—called on the neighbors and said he was afraid she was going to die, and went after a Physician. He attended her sick bed until almost the moment of her death, when he fainted and was removed. Her suffering was so intense that she was with difficulty prevented from tearing open her throat and stomach; and yet this creature calmly and steadily mixed, in her medicine, her drink, her food, the arsenic which was burning her life out! We proved no malice—we could hardly conjecture any; yet he was convicted. He subsequently confessed that he committed the crime with the intention of marrying another woman of small property and no attractions. He was executed. Now, when such demons exist, how idle is it for a man of ordinary honesty or humanity to hunt after the motive of a criminal?

This Prisoner is and always has been, driven by the slightest causes into bursts of ungovernable passion. As a boy he amused himself with stoning other boys. [p. 333.] When larger he threw a flat-iron at Jefferson Wellington. [p. 332.] In Jail before he went to State Prison, he fought and flogged another prisoner. [p. 330.] In State Prison he attacked a convict for moving his boots after they had been greased, and lamed him for a week, [p. 282]; fought another about some yarn, [p. 283]; assaulted the

Keeper Tyler—struck him with his fist, then made at him with a knife, [p. 263,] and was with difficulty subdued. Just before the murder he threatened the life of John De Puy, who forbade people giving him rum, [pp. 195, 241]; and in March last, the day after the Murder, he had a severe fight with Amos, who arrested him, and said, as Amos swears, "if he had a knife he would gut me." [p. 205.] Such a temper as this, influenced by such trivial causes, animating its desperate and reckless possessor, requires but little inducement to the commission of any crime.

The motive of a criminal is important when there is no direct evidence that he has committed the crime. Circumstantial evidence is vastly strengthened by proof of a strong motive actuating the accused, and impelling him to the act with which he is sought to be charged. But where, as here, the testimony is direct and conclusive that the bloody deed was performed by the Prisoner, his motive ceases to be material. It is not given to man to search the heart. Let that investigation be transferred to a Tribunal before which this Prisoner must shortly appear. The illegal act being proved, the Law declares the motive. THAT MOTIVE IS MALICE—A WICKED, DEPRAVED HEART.

But Doctor Brigham testifies that the Prisoner is INSANE; and Doctors McCall, Coventry, Van Epps and Fosgate agree with him. They also give it as their opinion that the Prisoner must have been insane on the twelfth of March; and that is the time, of course, to which you will direct your attention. The humanity of our Statute allows no insane man to be tried. A preliminary inquiry has satisfied this Court that the Prisoner IS NOT INSANE; and he has been put upon trial. Should he hereafter become insane, the same Statute provides that he shall not be sentenced or executed while in that condition. [2 R. S. 697.] But the present inquiry is, WAS HE INSANE ON THE TWELFTH OF MARCH?

If the Prisoner was insane on the twelfth day of March, he must be acquitted; and the testimony of Doctor Brigham being most important, I shall call your attention to it particularly. Before doing so, however, allow me to say, that I feel, in common with the whole public, the obligations we are under to Dr. Brigham, for his unwearied efforts and extensive researches in the humane and benevolent mission of alleviating the unfortunate condition of those whom God has bereft of reason. The great good he has thus accomplished reflects credit on him, on the Institution over which he presides, and on the State, and elevates the social condition of the age. I admire his intelligence in his profession, and his kindness of heart; and I feel happy to think that the acquaintance I have enjoyed with him for years might almost give me the right to claim him as a personal friend. But you and I see perfectly the difficulty with him as a witness on the stand. He is as profoundly ignorant of Law as he is familiar with Medicine. He is utterly unaccustomed to the prejudice, perversion and perjury of witnesses; and coming from the Asylum with a conviction that Freeman must be insane because

he does not assign, and the Doctors cannot guess, an adequate motive for the crime, his only inquiry is, to which class of insane persons he shall assign the Prisoner; and without stopping to reflect whether the Prisoner or his witnesses may not lie, he notes down, as the trial proceeds, *here* a fact denoting Dementia, and *there* another indicating Homicidal Monomania; *now* something that looks like General Mania, and *there* a suspicion of Cleptomania; *occasional* symptoms of Macho Mania, and again strong manifestations of the Lying Mania. On such testimony he builds his theory. He will not sit still to hear a witness cross-examined. If the witness John De Puy (the brother-in-law of Prisoner, whom I moved to have committed for glaring perjury on the stand, a motion yet undisposed of,) swears to Freeman's being up at night, dancing when he should have been asleep, Doctor Brigham makes a memorandum—"*Restless nights—Insanity;*" and I can't get him to sit still till the cross examination shows that the true entry should be "*Negro Frolic—Rum.*" He will not believe our witnesses because they do not see what he has pre-determined exists. He believes the Prisoner's mother quicker than a disinterested witness. When asked if he relies on an unchaste black, he replies with charming ingenuousness, "I do believe Deborah." You can furnish him no proofs of sanity, for there is nothing he has not seen or heard of insane people doing. He is filled with vagaries of the insane—ignorant almost of the habits of the sane. With the nature of blacks he is peculiarly unfamiliar. He does not know whether they ever tan. He cannot tell whether illness makes them pale. He thinks Freeman ought to have fled faster; yet he cannot tell the distance a horse will ordinarily travel in a day. He considers the conduct of Freeman in the presence of the Magistrates Paine and Bostwick, evidence of insanity; yet he will not admit that the Magistrates themselves, who differ with him, are better judges than he, of what they saw and he did not. He thinks Freeman's asking for a summons was evidence of insanity; yet when I ask him what process he ought to have demanded, he answers—"I do not know. I do not know a summons from a subpœna. I am summoned here to testify!"

His (Doctor Brigham's) memory, too, is treacherous. He commenced his testimony by saying that he had been asked by me what there was in the expression of an insane man which he could detect, and yet could not describe. He said, by way of illustration, that he had seen in court a man that he knew to be insane; and yet he could not tell how he knew it, or describe it. Mr. Seward asked him to point out the man, and he did so. We called the man inside the bar; suffered him to talk before you; and you saw that he was a maniac, with a wild, rolling eye and senseless discourse, that a child would discover to be insane. And the constable (Cannon) swears that he first pointed out this man to Dr. Brigham, as insane. This Doctor Brigham denies.

Let us now look at the grounds of his belief that the prisoner was insane on the twelfth of March. He never saw him till in June last, after the

defence of insanity had been interposed. His belief, therefore, is founded on the evidence in the case, and his own examination since the first of June. His own examination he places little stress on, except as satisfying him that Prisoner *is not feigning insanity.* We could have saved him the necessity of this. We admit that the Prisoner does not feign insanity. He occasionally tells abominable falsehoods—such as his assertion to Amos, the day after the murder, when trying to sell the horse he stole and ran away with. Amos asked where he got the horse, which you recollect was Burrington's. He replied, "he had a horse given him and had traded round till he got this one." [p. 204.] Equally false were his statements to the Rev. Mr. Austin, that he never heard of Wyatt—never knew he had committed murder—never heard of his trial—did not know what his defence was—what the result was—was not present, &c. [p. 247.]

Wyatt was tried in March for murder. The defence was insanity. The Jury disagreed; and the Prisoner was present, an apparent listener, during much of the trial. [pp. 324, 327, 334.] It is impossible, recollecting as he does, and repeating the minutest circumstances of his entire life, that he can have forgotten this; and yet the Rev. Mr. Austin, to whom he denied all knowledge of Wyatt, swears, "I have no idea that he did lie. His evident candor and frankness convinced me that he was not lying." [p. 255.] His denials, too, of knowing Van Nest, are false. He visited Van Nest's house the Monday but one before the murder, and asked Van Nest to hire him. He entered the back door. He had acquired a familiarity with the premises by living on them some years before. [p. 198.] These, therefore, are gross falsehoods, but they do not indicate that he feigns insanity.

Doctor Brigham then proceeds to give his views of the testimony given in the case; and here let me say that if you differ with him as to what has been proved, his opinion falls to the ground. It is based on what he considers the evidence in the case. If the base fails, the superstructure must fall; and this is precisely the point in which, as I have already said, the difficulty lies with Doctor Brigham's testimony. Let us begin by looking at his ideas of responsibility. He says, if I should take this knife and kill one of you, and sit down, he would swear I was insane. So if I should shoot into the Jury box and kill a half dozen Jurors, if that was all that appeared, he would swear I was insane. [pp. 302, 303.]

If a witness swear against me in a civil suit for a large amount, and I should kill him, Dr. Brigham swears he would think me sane; but if for a small amount, he should think me insane. [p. 306.]

Now, gentlemen, upon such a state of facts as either of these, the Law says I am a Murderer; and you will readily see that the safety of Society consists in upholding this Law. To make the crime itself and *alone* proof of insanity, is to extend entire immunity to men of standing who choose to turn criminals. He applies the same rule to theft, malicious and wanton injuries, and other crimes. [p. 303.] Doctor Brigham does not seem to have the

remotest idea of the frightful jeopardy in which his notions and his evidence place the Property and the Life of the Citizen. And when I look at his artless countenance, and hear the mild, amiable and gentle tones of his voice, while he is innocently dealing with doctrines that may convulse Society to its centre, he reminds me more of a child playing with Lightning, than a Scholar and Philanthropist bringing the lights of Science to aid the investigation and establishment of truth.

But what are the facts that Dr. Brigham considers proved? He thinks insanity existed in the Prisoner's ancestors. In this he errs. The Prisoner's father drank himself to death. His mother is part Indian, and is, and always was intemperate. [pp. 291, 322.] True, the black man, David Winner, testifies that his aunt, Jane Brown, and his sister are crazy [pp. 258, 259.] The Prisoner's brother-in-law, De Puy, confirms this as to Jane Brown. [p. 238.] But Doctor Bigelow tells you he never heard that Jane Brown was crazy till the commencement of this trial; he never saw any thing to indicate insanity in her except *ordinary intoxication*, [p. 350]; and Prisoner's mother swears—"I have three children; had five; but none of them are crazy but this one." [p. 286.] The Prisoner's uncle, Sidney Freeman, is insane. You will thus see that intemperance is infinitely more the disease of his ancestors than insanity.

Doctor Brigham's next important fact is AN ASSUMED CHANGE IN THE PRISONER'S TEMPER AND CHARACTER. He truly says: "So common is this change of character in insanity, that many regard it as necessary to the definition of the term. A prolonged change of character, without any evident external cause, is given in many works on insanity as a characteristic; and the cases are almost innumerable where such changes have come within my own observation." [p. 295.] To the truth of this I heartily subscribe. It conforms to the general observation of mankind. It is as good a definition of insanity as need be given.

HAS ANY CHANGE TAKEN PLACE IN THE PRISONER WITHOUT EXTERNAL CAUSE?

We have his history from childhood. He was born and brought up in Auburn. He was 21 years old last September. He has grown to be a man in size. He was a mischievous boy; and, utterly uncared for and unrestrained, he naturally ends by being a criminal man. He ran away from Warden, [p. 264]; he ran away from Lynch, [p. 321]; he never lived any considerable time in one place. [pp. 324, 325.] He was always violent, and vicious in his temper. I have already referred you to his continual fighting from childhood. (Refers to testimony of Munroe.) He was always profane. Before he went to State Prison, Vanderheyden pursued him, and overtook him on a canal boat; told him he had two warrants for him; and the Prisoner replied: "It is a d——d lie—you have no warrant for me." [p. 331.] In State Prison, Van Keuren threatened to report him. He replied: "report and be-d——d." [p. 326.] When Amos arrested him after

the murder, he was equally profane, threatening to rip him open if he had a knife. In this, then, there is no change.

He was always extremely covetous and close in making bargains. He insisted that Lynch should pay him five shillings a day for work, instead of four. [p. 322.] He sawed wood for Conklin, and insisted upon three shillings instead of two. He claimed more from Murfey than he was willing to pay, [p. 237]; and tried to get a summons from the Justices against him. [p. 291.] He offered Morris two shillings for a knife, the price of which was four; then offered him four for a knife and handle. [p. 170.] Hyatt sold him a knife for one shilling, the price of which was two. He beat Hyatt down on the price of a rivet from six pence to three pence. [p. 188.] In this, then, there is no change.

IN HIS PHYSICAL APPEARANCE THERE IS NO CHANGE EXCEPT GROWTH, INCREASED DEAFNESS AND, POSSIBLY, THE DIFFERENCE IN SPRIGHTLINESS AND FRANKNESS THAT YOU WOULD EXPECT TO FIND BETWEEN AN UNCONCERNED CHILD, AND A DISCHARGED STATE PRISON CONVICT. Lynch, [p. 323,] his uncle Aaron Demun, [p. 324,] Wood, [p. 326,] Andrus, [p. 327,] Simpson, [p. 328,] Markham, [p. 329,] Austin, [p. 330,] Sabin, [p. 332,] Munroe, [p. 333,] all of whom have known the Prisoner nearly his entire life, and have had the best opportunities of judging, swear there is *no other change* than I have described. His relative, Robert Freeman, called by the defence, testifies to the same thing, [p. 282]; and the colored woman, Mary Ann Newark, with whom Prisoner boarded at the time of the Murder, substantially confirms him. [pp. 281, 282.] The smile on which Dr. Brigham lays such weight, the Prisoner always had; so had his father, and his grand father, as these witnesses show. It does not prove insanity, but it does prove how true it is that a man may

"Smile and smile and be a Villain."

How are you to find the fact of a *change*, in the face of all this evidence? Will you believe John De Puy? Even Dr. Brigham puts diminished trust in him. He is contradicted in every important fact he swears to. He says Freeman could once read. Freeman's mother says he never could. Hotchkiss says the same thing. [p. 285.] He swears he never saw the Prisoner drink spirits. The evidence is abundant that he again and again forbade people giving him liquor. He swears that he noticed nothing the day he was removed from prison, and acted like a fool; describes his buying a cap, and mistaking quarter dollars for halves; sitting on a pile of boards, and people asking De Puy "what d——d fool that was who was sitting there?' yet the Chaplain of the prison proves to you that the day he left the prison, he appeared to feel well; made some music and fun; said when asked to sign the usual receipt for three dollars given prisoners on their discharge, that he had been imprisoned unjustly and was'nt going to settle so; when told unless he signed it he could'nt have the money, said he could'nt write; was

told to make his mark, which he did, and received the money. [p. 338.] Do not forget that the idea of being entitled to pay in the prison is a common one among the convicts, as you have heard.

What does honest Aaron Demun, the Prisoner's uncle, say of his appearance on the day spoken of by De Puy? He saw the Prisoner the day he came out of prison on the "opposite side of the street;" Prisoner said, "Uncle Aaron, how d' ye do?" Demun asked how he did. Prisoner replied "Pretty hearty." Did not seem deaf. [pp. 324, 325.] Is it not obvious, then, that De Puy perjures himself? He swears to Prisoner's running back and forth in the streets of Auburn, in the day time, without reason. Not a citizen of Auburn confirms this! He contradicts himself. He swears that Prisoner, after coming out of prison, only answered questions, and never commenced conversation; yet he details an animated description, an hour long, given by Prisoner of a fight with Hoskins, and another of half an hour with Tyler. [pp. 231, 241.] He states that Prisoner had a knapsack on his back in prison and was crazy there. No one of the Keepers confirms this, or ever saw it. He swears that Prisoner is now crazy, and has been for years. He denies that he said, since Prisoner was arrested, that he was not crazy—only ugly when drunk. Yet Stephen S. Austin, a perfectly respectable man, swears, that after the story got round that Freeman was crazy, he asked De Puy about it, and he replied "No! he is no more crazy than you or I, except when he is drunk. Then he's an ugly little devil, and I was always afraid of him." [p. 330.] Munroe swears De Puy told him Prisoner was not crazy. [p. 333.] He told others the same thing. Under these circumstances I felt it my duty to ask the Court to commit him for gross and wilful perjury upon the stand, and I call upon you totally to disregard his worthless testimony.

Where, then, will you look for evidence of change? To Deborah De Puy? She gives no facts, and she either has no memory or no character. [p. 287.] If she swears she has a husband and cannot remember where she was married, when she was married, whether she had a large wedding, or who married her, what reliance can you place upon her description of a change in Freeman? Or, will you hear Sally Freeman? The Prisoner did not live with her for five years before he went to prison. She did not see him the whole five years he was in prison; has seen him half a dozen times since; did not see him for two months before the murder; visited him in Jail and asked him what made him commit the murders; he made no reply. She gives no facts, and testifies with all the *inducements* to swerve from truth, perhaps I might say the *obligation*, that hangs over a mother testifying for a son's life. Or, can you gather the change from Ethan A. Warden's testimony? The Prisoner lived with Warden as a lad; played with his children; ran away when he was sent of errands. Mr. Warden swears he was not discharged, but was sent of an errand, and never came back. He has been, then, on Mr. Warden's errand ever since!

Mr. Warden has been extremely active in preparing this defence; in procuring witnesses; assisting counsel; qualifying himself to testify, and testifying. It is infinitely to be regretted that his curiosity as to the state of Freeman's mind, and the extent of his mental and moral culture, should not have been awakened earlier. If Mr. Warden had examined the boy who lived with him on religious subjects, and had given him a fair education, he might, at least, have been able to tell us what Freeman knew *then* that he has forgotten *now*, even if he might not, perchance, have arrested the catastrophe we are investigating. Where have Mr. Warden's kind feelings for this boy slumbered during the last fourteen years? Has he employed Freeman when he was hunting around Auburn for work? Has he inquired after his welfare? Has he ever spoken to him in the streets? Once, indeed, he saw Freeman in State Prison. His counsel say he was imprisoned wrongfully. Mr. Warden found in prison the boy who had lived with him—the playmate of his children. Did he inquire how he came there? whether he was guilty? how he behaved? when he was to come out? what could be done for him? No: he observed a change, and truly there was one. It was a great change from the *fat* of Mr. Warden's Kitchen, to the leanness of a State Prison; from the *frolic* of childhood, to the responsibility of manhood; from *sporting* with Mr. Warden's children, to *hard labor* and *a convict's cell!* Mr. Warden observed this change, and although he made no inquiry as to the cause, or effort to remedy it, he swears "*he thought to himself what's come over Bill?*" Why, Mr. Warden might have remembered all the causes for change I have described, and he ought to have recollected *that the law had come over Bill;* that he was a felon in prison at hard labor, not a truant boy frolicking with Mr. Warden's children, and having the run of his Kitchen. And if Mr. Warden had sympathy to spare, then, and when Freeman was discharged from prison, were the occasions to procure him employment, restore him to usefulness and happiness. But he has waited till this man, driven to desperation, has committed a crime, the thought of which almost freezes one's heart, and he stands (if I may so speak,) at the very foot of the Scaffold! Thus, Mr. Warden's horror of Capital Punishment, and peculiar views in other respects, impel him to exertions to rescue this man from the law, the hundreth part of which, employed a few months ago, would have made the Prisoner a useful citizen, and saved an estimable family from butchery. But Mr. Warden's testimony shows no change except what is natural under the circumstances; and the testimony against any change is overwhelming.

HAS THE PRISONER CHANGED HIS HABITS? This is one of the strongest tests in the books of Homicidal Monomania. It is the test Dr. Brigham applies to me. Let us try the Prisoner by it. Vanderheyden swears that he has had process several times for the Prisoner, for petit larceny, before he was sent to the State Prison, and when he must have been about fifteen or sixteen years of age. [p. 331.] He broke open a pedler's cart, and was

arrested for it. He then stole hens, and was arrested. He was found at John De Puy's under the bed. He escaped from the constable after he was arrested; was pursued and found on a canal boat with a bottle in his pocket, as I have already stated. He was arrested then for stealing Mrs. Godfrey's horse, and discharged for want of proof. He was again arrested; committed to Jail; broke the lock of the Jail; let himself out and another prisoner; was pursued, overtaken, brought back, tried, convicted, and served five years in the State Prison at Auburn. [pp. 326, 330.] It is suggested that he was innocent of the last offence. The evidence in this case leads to no such conclusion. Vanderheyden has that impression; but it is incredible that this man could be tried here in Auburn, where he was born and brought up; sent to the State Prison in this place where he, even now, has such warm friends, and stay there five years, an innocent man. He stands before you as a man legally convicted of that offence. Judge Richardson, before whom he was tried, is a witness in this case, called by the defence, and proves his conviction. No question was asked him as to previous innocence, [p. 231]; nor did the defence venture to ask such a question of either of the witnesses we have called; *i. e.* Myers, the District Attorney, who tried him; Markham, one of the Jurors; or Andrus, the Counsel who defended him. [pp. 293, 327, 330.] The point is not essential or material to this case; but I have no doubt he was guilty of the offence for which he was sent to prison. He assisted another black, known as Jack Furman, or Willard, in stealing Mrs. Godfrey's horse. He stole Mrs. Wyckoff's horse the night of the murder; this being worthless, he stole Burrington's, and tried to sell it to Amos, Corning and others. [p. 204.] There is no change here, then. His habits are unchanged. He lied in early life; he lies now. He swore before; he swears now. He fought before; he fights now. He stole before; he steals now. He attempted to kill Tyler in the prison; he kills the Van Nests now. There is no change in him, except that his depravity hardens with years. What other indications does Dr. Brigham find in the case? Sleepless nights; but there is no proof of this. Of De Puy I have already spoken. From De Puy's the Prisoner went to Adam Gray's. Adam Gray's testimony indicates that the excitement of Prisoner was caused by liquor, although he never saw him drunk but once. [p. 288.] From Gray's he went in January last to live in a part of this village mostly settled by colored people, and called "New Guinea," and there resided several weeks with Laura Willard, *the wife of the man who had been concerned with him in stealing Mrs. Godfrey's horse.* Why is she not brought upon the stand? Willard is now in State Prison. You, who saw the colored man, David Winner, on the stand, who says, "he can't read and can't count over one hundred without missing some—drinks spirits when he wants it, and don't when he don't," know what value to attach to his testimony. Where is Laura Willard? and why did the Prisoner go to live with the wife of one who had been his previous associate in crime? one, too,

who, it is contended, swore him into prison? Mary Ann Newark, with whom Prisoner lived at the time of murder, knew nothing of his being up nights. [p. 281.] There is, then, no proof of sleepless nights within a month of the time of the murder. Taylor swears that he slept well the night after; and the Jailer swears that his rest has never been broken, so far as he knows, for the four months he has been in Jail, except one night when he forgot to give him his bedding. Then he rattled his chains and knocked against the wall till it came. [p. 335.]

Doctor Brigham thinks there would be a calm after the homicide. He thinks he now has dementia; but there would hardly be an uninterrupted tranquillity in an insane man's rest for five months, beginning a month before the murder, and continuing all through the tragedy and the trial! You will not find, therefore, in the evidence, the sleepless nights on which Dr. Brigham relies. He thinks the testimony shows the Prisoner's pulse irregular, but it does not. Dr. Bigelow swears that at the commencement of a long conversation his pulse was at seventy-seven; afterwards, while standing, eighty-one; when about leaving him, eighty-six. [pp. 213, 214.] Dr. Spencer swears "the Prisoner has slept well, eat well, and is in good physical health generally." [p. 353.] There is no derangment of the pulse proved; so far from it, the Prisoner has a perfectly healthy pulse, except when terrified by threats or fear of punishment. Not one of the Physicians who examined him attached importance to his pulse, as indicating insanity; so far from it, the testimony of all of them shows that the Prisoner's physical health is perfect.

Doctor Brigham is strongly impressed by his inability to satisfy himself of the MOTIVE for this murder. On this I have already commented. He thinks the testimony shows that the Prisoner NEVER ASKS QUESTIONS. Why, the testimony shows that he continually does! He asked De Puy for Jack Willard; he asked Bostwick for a warrant, and again for a summons; he asked Paine for a warrant; he asked Austin if he had wood to saw; he asked his uncle Demun how he liked his place, and whether he was at work steady; inquired of Simpson, Hyatt and Morris for knives. If this is proof of sanity, at or about the time of the commission of the offence he asked questions enough. Since he has been in Jail, he has been continually occupied in *answering* questions.

Dr. Brigham thinks the EXTERNAL APPEARANCE of the Prisoner, here in Court, indicates insanity. I appeal to you if this is so. You have seen insane persons. You saw the man whom Doctor Brigham pointed out in Court. I will read to you from Esquirol the physical symptoms of dementia, which Doctor Brigham says is the insanity of this Prisoner. I cite Esquirol because Dr. Brigham says he is high authority. Guy, Ray, Pritchard and other writers, agree with him. Esquirol says: "The face is pale, the eyes dull, and moistened with tears, the look uncertain, and the physiognomy without expression." [p. 419.] Of their habits, he says: "Almost all have some sort of ridiculous habit or passion. Some are constantly walking about

as if seeking something they do not find. The gait of others is slow, and they walk with difficulty. Others, still, pass days, months and years, located in the same place, drawn up in bed or extended upon the ground. One, in an interminable babble, speaks in a loud voice, constantly repeating the same words; another, with a sort of continued murmur, utters, in a very low tone, certain imperfectly articulated sounds—commencing a phrase without being able to finish it. The latter does not speak, while the former beats with his hands both night and day; his neighbor at the same time balancing his body in the same direction, with a degree of monotony very fatiguing, even to an observer. One murmurs, rejoices, weeps and laughs at the same time; another sings, whistles and dances during the whole day. Many clothe themselves in a ridiculous manner," &c. [p. 418.] In speaking of their intellects, he says their sensations are feeble; cannot recall impressions recently made; cannot fix their attention; are consequently incoherent and disconnected in conversation and narration. [p. 417.]

Now, has Freeman one of these symptoms, intellectual or physical? Has he not sat here for four weeks without a single grotesque or unnatural movement? The smile so often adverted to, he always had; so had his father and grandfather. You have had opportunities for observing it for two entire weeks, and will determine whether it indicates any thing—and what. Aside from this, is there a single feature or movement about him indicating imbecility or insanity? Did you ever see a sharper, brighter eye, or one more fixed and resolute? Did you ever notice an unnatural movement in him? Ever observe him for an instant appear to be talking to himself? Ever detect the slightest movement of his lips, or the least wandering in his eye? I have not. Does he ever laugh? I have not heard him. Is not his memory remarkably retentive? Does he not detail to Lynch the minutest circumstances of his early as well as his later life? [p. 322.] Does he not narrate to Wood all the circumstances of his imprisonment, escape, flight and capture? [p. 326.] Does he not remember perfectly where he worked in prison, what at, and under whom? What did he ever know that he has forgotten? Is not his attention perfect? Does he ever wander from one subject to another, or betray the least incoherence? I can find no evidence of it. If I were asked to name the disease he certainly has not, I should name dementia.

I have thus gone through, in detail with all the circumstances of any moment on which Dr. Brigham founds his belief of the Prisoner's insanity. He has also favored us with an elaborate explanation of the facts on which we rely to establish his sanity—such as *preparation*, *design*, *concealment*, *memory*, *flight*; these can as well be considered by you as by him.

It is doubtless true, that there is no one thing a sane man does, that Dr. Brigham has not heard of some insane man doing; but it will be for you to inquire, presently, whether all these evidences of sanity can possibly combine in the case of the same insane man. Meantime, I ask you whether the

testimony does not overwhelmingly contradict all the facts on which Doctor Brigham's theory of insanity rests? Were the Prisoner's ancestors insane? Has his character, habits or appearance changed without external cause? Had he sleepless nights at the time of the murder, or at any time, from disease? Is it proved that he could have had no motive for the murders? Is his pulse irregular? Does he ask no questions? Does his external appearence indicate dementia? I submit to you that the reverse of all this is true; and if so, the theory constructed on these false facts must fall.

Doctors McCall and Coventry reside in the same town with Dr. Brigham. The latter is a Trustee of the same Asylum, and both claim to derive most of their experience from observation in that institution. They naturally agree with Dr. Brigham; Dr. McCall is, in addition, a Phrenologist, and says he can judge by Freeman's external appearance that he is insane, and what the character of his insanity is. He thinks Prisoner has cleptomania, which is an irresistible propensity to steal. [p. 310.] He thinks the smallness of his head denotes insanity; yet it is as large as Dr. Brigham's or mine. He thinks he leans too much forward; yet that is the way a deaf man tries to hear. He thinks the holding of his arms awkward; yet he seems to forget that Prisoner has been wounded in both arms. In one respect, Doctors Brigham and McCall differ; both agree that insanity is a disease. Dr. Brigham thinks it in some forms contagious; Dr. McCall thinks it not strictly contagious, but at times epidemic. He says it appears epidemic on the coming of warm weather. [p. 310.] Dr. B. is sorry to hear of cases of homicidal monomania, for fear it will induce others to imitate it. In that way he thinks it may be called contagious! [p. 305.] Contagious by imitation! This is indeed a peculiar disease! I can imagine *crime* being contagious by imitation, but that *disease* should be thus contagious, seems to me singular. I do not think it is true of any other disease but insanity. At all events, I cannot realize that I should ever begin to shake, from seeing another man with the fever and ague! There is a breadth and brilliancy in these theories that reach far beyond the institution from which they emanate; and the Professors may well think that

> "No pent up *Utica* contracts our powers,
> The wide—the boundless continent is ours."

Dr. McCall thinks that the Prisoner's insane delusion was that he was wrongfully imprisoned and was entitled to pay. He thinks the insane impulse under which the Prisoner committed the murders, was in some degree manifested in prison, in the attack upon the convict and the officer. [p. 308.] Now, this delusion is certainly epidemic in the prison, as the testimony shows; and if the violence and the homicide which it provokes, in the prison and out, should become contagious, this community would be afflicted with a more fatal pestilence than Asiatic Cholera or the Plague. It seems to me, under these circumstances, that public safety calls for a severe treatment of the early cases. [Mr. V. B. then commented in detail on the testimony of

Doctors Van Epps, Briggs, Fosgate, Hermance, Hun and McNaughton, and on the testimony of Curtis, Green, Smith, W. T. Worden and others.]

The Reverend John M. Austin has satisfied himself that the Prisoner's mind "is in a shattered or unsound state, though he can give no technical name to the difficulty." [p. 251.] Mr. Austin is the Pastor of the Universalist Church in this village. He is opposed, as he swears, to hanging any one, and cannot think it right to take the life of another. [p. 252.] He has written for religious and political papers in regard to this case; employed counsel; taken a trustee of his Church (Mr. Curtis) to the Jail, preparatory to his being a witness; gone there with other witnesses; talked of the case a hundred times, [p. 254]; and gives us his own views on the stand. He swears he is "quite confident that a sane man twenty-three years old, who cannot read, but thinks he can—who cannot count more than twenty-seven or eight, but thinks he can, cannot be found in this county." He therefore thinks Prisoner insane. What does Dr. Bigelow testify to? He says, "I have known men in prison over twenty-three years old, who could not multiply two by four, and who could not read. I have seen both white and colored men in that condition. A few days since, I examined a prisoner by the name of James Madison. He is a negro, twenty-four years of age. I asked him to let me hear him count; he said, 'twice ten is twenty, three times ten is fifteen.' I asked him how much two times four was; he said 'it would be nine.' I asked him how many days there were in a week; he answered, 'six.' I asked him how many shillings there were in a dollar; he said, 'I could'nt tell that.' I asked him how many days there were in a month and how many cents there were in a shilling, and he made the same answer. I asked how many hours there were in a day; he said 'I don't know, sir; I could'nt tell.' He counted up to thirty regularly, and then said, 'forty, fifty, sixty, seventy, eighty, ninety, sixty, forty, forty-one, forty-two, forty-three, forty-five, forty-seven, forty-eight, forty-nine.' I then said, 'then what?' He replied, 'I don't know; I can't make it out.' I asked how many quarts there were in a gallon; he said, 'I can't tell.' I asked how many pecks there were in a bushel; he said, 'I guess it is three pecks, three or four, let me see; I believe it is two pecks in a half a bushel; I guess it is four pecks in a bushel.' I asked how much six and seven were; he said, 'it would be thirteen.' I then asked him to count again. He began with 'ninety,' and continued, 'thirty, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, forty, fifty, sixty; that's as far as I went the first time; I can't go no further. Stop, I can go one more—sixty, sixty-one, sixty-two, sixty-five, sixty-seven; there, I wont count any more. That's as far as I went the first time, and I made a balk.' The other was a white man, by the name of Jacob Miller. His age was twenty-nine. Seeing him in the prison, I called him up to me and asked him if he could read; he said he could. I asked him to call over the letters of the alphabet. He called them correctly. I then pointed to this sentence,

'The old Romans used to write in the Latin language.' He then began to read by saying—' T-h-e o-l-d R-o-m-a-n-s old man u-s-e-d seat t-o w-r-i-t-e church in t-h-e L-a-t-i-n tin l-a-n-g-u-a-g-e Jesus.' I asked him if he could count bills; he said, 'I can't count one bill from another.' He said, 'nine and nine were nineteen, and that six and five were fifteen, and that seven and eight were eighteen.' He said, 'three times four were thirteen,' and counted to forty-five, and from fifty to seventy-nine, correctly; but he could not count correctly to one hundred. He didn't know how many pints there were in a quart, nor how many pecks there were in a bushel."

Now, Mr. Austin must see how very easy it is for him to be mistaken. James Madison certainly thinks he can count. He counts thirty, which is two or three more than Freeman. From that he counts by tens to ninety, then sixty, forty, forty-one, forty-two, forty-three, forty-five, forty-seven, forty-eight, forty-nine. Beyond this he says he couldn't make it out. On a second trial, he starts at ninety, which seems to be his maximum, and continues thus: "thirty, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, forty, fifty, sixty;" and he adds, "that's as far as I went the first time; I can't go no further." But on due reflection, he continues: "Stop, I can go one more—sixty, sixty-one, sixty-two, sixty-five, sixty-seven; there, I wont count any more. *That's as far as I went the first time, and I made a balk!*" Again, Jacob Miller says "he can read; he repeats all the letters of the alphabet correctly, and he reads, in entire sincerity, the following sentence. "The old Romans used to write in the Latin language." He renders it thus—"*Old man seat church in tin Jesus!*" He counts to forty-five, and by his addition makes nine and nine nineteen, six and five fifteen, and seven and eight eighteen! James Madison is twenty-three, and Jacob Miller twenty-nine. A little attention to their exhibitions would show Dr. Austin the difference between ignorance and insanity.

But there are other peculiarities in Mr. Austin's testimony. Freeman told him that "if they would let him go this time, he would try to do better." [p. 250.] This is the very essence of legal sanity—the very test of responsibility that the law imposes—A CONSCIOUSNESS THAT HE HAD VOLUNTARILY DONE WRONG; and yet to Mr. Austin it showed "an entire want of rational appreciation of the nature and enormity of his deeds, and an entire ignorance of the consequences of his act!"—in other words, it showed insanity. Did Mr. Austin think him insane in Jail? He swears he prayed with him, [p. 248]; and I can hardly believe that he would pray with an insane man. Pray for him he might and ought, but I hardly think he would pray with him. His examinations of the Prisoner have been most singular. In regard to the fundamental principles of Religion he never questioned him. These, he says, he supposed he knew, [p. 255,] and yet these would seem to be the precise subjects of christian inquiry, and instruction in these, all important to the Prisoner's salvation. Neither Mr. Austin nor any other wit-

ness ever attempted to set Freeman right as to a single notion he entertained, which might influence his future conduct. So far from it, efforts were continually made to lead him from one folly or absurdity to another. When Hopkins understood him to say he had seen Jesus Christ in Sunday School, [p. 243,] instead of correcting or reproving this unhappy creature on the brink of destruction, Hopkins asked him whether Jesus Christ took a class, and whether he preached or talked! [p. 243.] Dr. Austin gave him a Testament, and he is the first man who is proved to have witnessed the Prisoner's peculiar manner of reading. Has he tried to correct him? Has any body attempted to teach him to read? Witness upon witness has been taken to the Jail to see the Prisoner run his fingers along the sacred pages and repeat the words "O Lord—Jesus Christ—Mercy—Moses," [pp. 244, 260,] which were not on the pages, and yet Dr. Austin, instead of stopping this mummery, furnished the Testament, first witnessed the performance, and has again and again superintended it since! If the Rev. Mr. Austin knew the natural disposition of the negro as well as I do, and his clerical duty as well as I hope he does, he would have taken Freeman a jewsharp, instead of a Testament, to play on!

Under Mr. Austin's tuition, his weak and credulous trustee, (Mr. Curtis,) came to the conclusion that Freeman "knows no more of the moral character of an act than a dog or a cat;" that he is "part fool, bordering on idiocy —idiotic and crazy." Some of the time he thought "he was foolish; sometimes that he was crazy; sometimes a little of both." [p. 261.] "Part fool, bordering on idiocy—crazy and an idiot;" and he sums up his complicated derangement by swearing that he is BOTH *crazy and insane!*" [p. 262.] True, once he suspected Prisoner was deceiving him, but on appealing to Mr. Austin, who was present, explaining the symptoms, the suspicion vanished, [p. 262]; yet he had the strongest evidence that Prisoner was deceiving him, for when he asked Prisoner what he killed the family for, Prisoner said: "You know I had my work to do." Curtis told him *that was nonsense, and repeated the question loud and distinct.* Freeman then answered: "*I don't know.*" [p. 261.] Why was Mr. Curtis selected to witness this exhibition and testify to it? He certainly was not the most intelligent member of Dr. Austin's congregation. He is undoubtedly honest, however, and thus describes Prisoner who lived with him in 1840, before he went to prison: "His disposition was not good; he was stubborn and stupid. He was of no use to me. If I sent him away five rods, he would be just as likely to bring the wrong thing as the right one. He was a dull, morose and stubborn boy; and if he had any capacity I could not discover it." [p. 259.] Certainly, this does not prove the change on which Dr. Brigham relies. But you have the facts which Dr. Austin and Mr. Curtis testify to, and you will say how far they sustain their theories, and how much they may be relied on.

There is one extraordinary fact in this case that will not escape you—

there is but one white witness who ever suspected Freeman of insanity before the murder! In this community, where he was born and brought up, and where such a thorough search has been made for testimony, there is but a single witness on whom you will place any sort of reliance, that swears he suspected Prisoner of insanity before the murder. And this witness is Levi Hermance, who conversed with the Prisoner in the month of December, twice, for five minutes each time! [p. 274.] The effect of this testimony I must leave to you without comment. True, neither Mrs. Godfrey, Esquires Paine and Bostwick, Messrs. Warden, Smith and Briggs, nor any of the other witnesses for the Prisoner, detected any insanity. But there is an extent and variety about the acquirements of Mr. Hermance, before which their gifts

"Pale their ineffectual fires."

I bow with reverence, lay my hand upon my mouth and my mouth in the dust when I find myself confronted by one who swears to us that he has practiced Allopathy and Homœopathy, but is esteemed a Thomsonian practitioner; has worked on a farm; been an agent in a woolen factory; taught school; sold goods at auction; is an attorney of the Common Pleas, and a turnkey in the State Prison! [p. 275.] Whatever conclusion you may come to in regard to the *Prisoner*, you will readily see that this *witness* has no monomania.

Let us now turn to the medical witnesses for the prosecution. Doctors DARROW, [p. 325,] HYDE, GILMORE, CLARY, [p. 339,] DIMON, [p. 340,] WILLARD, [p. 344,] BIGELOW, [p. 349,] SPENCER, [p. 353,] swear that they have examined the prisoner repeatedly, to ascertain whether he was insane; and they unanimously conclude that he is SANE. [Mr. Van Buren here reviewed carefully the testimony of each of these witnesses. But it is impossible, without extending this sketch beyond the patience of the reader, to report his remarks. Their testimony is pretty fully detailed at the pages referred to, and he invites attention to it, and particularly to the several cross-examinations, as an exhibition of rare professional attainments, and a combination, no less rare, of profound medical knowledge and sound common sense.]

In view of this mass of testimony, coming from those to whom you daily confide your own health and life, and those of your families, if this were a mere question of medicine, would you not be forced to conclude that this Prisoner is sane? But there is one physician whose name occurs often in the testimony, who invited Dr. Bigelow and others to visit the Prisoner; who frequently visited him himself, and who is proved to be an eminent physician and surgeon. [pp. 275, 352, 349.] Where is he? Where is Dr. PITNEY? Mr. Seward sent him to the Jail to examine the Prisoner, [p. 352]; why is he not called upon the stand by the defence? Or when called by us, [p. 185,] why was he not cross-examined as to Prisoner's sanity? Why

send to Utica and Albany for physicians, who never before saw the Prisoner, and neglect to call an eminent surgeon here, who examined him repeatedly at the request of Prisoner's Counsel, and knew him before? Why resort to the foreign scientific market, when the domestic furnishes an abundant supply? We may be told that Dr. Pitney is the father-in-law of one of Prisoner's Counsel, and that motives of delicacy have prevented his being called. But two of the Prisoner's Counsel themselves have made affidavits in this case. [pp. 145-6-7.] Their clerk has been sworn. [p. 262.] Warren T. Worden, who assists the defence as witness, trior and counsel, has not only testified as to the past, but prophesied as to the future. In his judgment, the Prisoner "would laugh upon the gallows as readily and freely as he did in his cell; he would probably know as much as a dumb beast, that was taken to the slaughter house, as to what was to be done with him!" [p. 227.] In the cell, you remember Dr. Briggs testifies that the Prisoner laughed when the Phrenologist felt Warren T. Worden's bumps, and so did Dr. Briggs and Worden. [p. 278.] It is not this delicacy, therefore, that keeps Dr. Pitney from the stand. When a client's life is at stake, such delicacy must give way. Again, I ask, where is Dr. Pitney? The absence of one statue at a Roman funeral caused more remark than the presence of all others; so you, in missing Dr. Pitney from this galaxy of medical science, will be forced to conclude that he has satisfied himself that Freeman is sane.

IF PRISONER WAS INSANE ON THE TWELFTH OF MARCH, WHAT SPECIES OF INSANITY HAD HE? I have endeavored to show that he has not dementia now. He is not an idiot. Idiocy is not insanity. Dr. Brigham does not so consider it. Esquirol does not so consider it. [Esq. p. 447.] Coke does not so consider. Insanity is a derangement of the faculties—Idiocy is a defect of them. Idiocy is connate—Insanity acquired. Insanity is a change—Idiocy is the absence of change. Idiocy is written upon the external structure of the man—Insanity affects only his expression. The idiot is free from disease—the insane man is not. The evidence in this case rebuts all idea of idiocy. Dr. Brigham even finds no indication of it. He says the Prisoner had, on the twelfth of March, homicidal monomania. [p. 310.] This Dr. Brigham terms a disease—a disease which is sometimes preceded by no symptoms. [p. 310.] It is a sudden impulse to kill, and the unaccountable killing is the first symptom of the disease. This he illustrates by my rising and stabbing one of the Jurors. In me, this would be (he thinks) homicidal monomania. Now, Mr. Christian, [addressing one of the Jurors,] ignorant as you and I may be of medicine, the symptoms of this disease we can appreciate—IT IS A KNIFE THRUST IN THE HEART! It concerns us to understand fully this disease, and Dr. Brigham will therefore excuse us for looking to other authorities for the definition of it.

This prisoner is proved incontestibly to have been, for the past two years, *in perfect physical health*, except that he had an ear-ache in January, 1844 or 1845, and was costive in June or July following, for which Dr. Bigelow

prescribed. [p. 212.] With this exception, he has eat well, slept well. His bowels are regular; so is his pulse, ordinarily; and his countenance indicates perfect health, although his color is not as dark as when habitually exposed to the sun and air. He carefully prepared weapons for this murder. He concealed them. The night previous he was at a ball. He performed his usual labor at home the fatal evening. He went to the house of Van Nest in the night, and lay in wait. He entered; slaughtered the family; stole two horses; fled; fought when arrested; denied all knowledge of the murder; and his past life, for the last six years, has been a scene of intemperance, profanity and crime. Yet Dr. Brigham thinks this a case of homicidal monomania! Now, I do not stop to inquire whether it would be ever safe to allow the crime alone to be received as proof of insanity. It is true that several eminent medical men say that insanity may exist without any derangement of the intellect. The theory was first broached by Pinel, who terms this species of insanity *Manie sans delire*, or, as some authors translate it, the *Reasoning Mania*. It is accompanied with little or no apparent intellectual derangement, and consists of a derangement of the affections and passions by disease, which subverts the will. Esquirol, who at first rejected the theory, subsequently adopted it; and other medical writers of high authority now agree with Esquirol. By Pritchard it is termed moral insanity; by Ray partial moral mania; and Doct. Dimon, one of the most intelligent medical men sworn by us, testifies, that he believes such a disease may exist. [p. 342.] Let us then refer to eminent medical writers to see what this disease is.

Esquirol, in his treatise on Insanity, at page 362, says: "We have classed among maniacs, persons who appear to enjoy the use of their reason, and whose affective functions alone seem to be in the wrong. These maniacs perceive, compare and judge correctly; but they are drawn aside from the slightest cause, and even without an object, to the commission of acts of violence and fury. They are *irresistibly* impelled, they assure us, to lacerate and injure themselves and destroy their fellow beings. These wretched persons have a consciousness of their condition; deplore their situation; warn their friends to protect themselves against their fury, or place them where they can do no harm. Pinel, more than any other physician, has called the attention of observers to this fearful malady, which in hospitals they call *reasoning insanity*, and to which our illustrious master has given the appellation of *mania without delirium*. Fodere admits this variety, which he calls *maniacal fury*. But does a form of mania really exist, in which those who are affected by it preserve the integrity of their reason, whilst they abandon themselves to the commission of acts the most reprehensible? Is that a pathological condition in which man is irresistibly led on to the commission of an act which his conscience condemns? I think it is." Again, on page 366, he says: "Homicidal monomania spares no age, since children from eight to ten years old are not exempt from it. It is

ordinarily periodical, and the paroxysm or attack is preceded by symptoms which indicate a general excitement. This class of patients experience colic pains and a sensation of heat in the bowels and chest, attended with pain in the head. They suffer from insomnia; the face becomes red or very pale, the skin swarthy, the pulse hard and full, and the body affected with convulsive tremors. The patient usually makes an assault, when no external occurrence gives rise to the excess to which he yields himself. The act accomplished, it seems that the attack is over, [p. 367,]; and some homicidal monomaniacs seem to be relieved of a state of agitation and anguish, which was exceedingly painful to them. They are composed, and free from regret, remorse or fear. They contemplate their victim with indifference, and some even experience and manifest a kind of satisfaction. The greater part, far from flying, remain near the dead body, or concur with the magistrate by denouncing the act which they have just committed. A small number, however, retire, conceal the instrument and hide the traces of the murder. But very soon they betray themselves, or, if not seized by the police, hasten to reveal the act; to relate its most minute details, as well as the motives of their flight."

Ray, in his treatise on the Medical Jurisprudence of Insanity, [p. 224,] speaking of cases of moral mania, says: "In nearly all, the criminal act has been preceded either by some well-marked disturbance of the health, originating in the head, digestive system, or uterus, or by an irritable, gloomy, dejected or melancholy state; in short, by many of the symptoms of the incubation of mania. The absence of particulars, in some of the cases we find recorded, leaves us in doubt how general this change really is; but a careful examination would no doubt often, if not always, show its existence where *apparently* it has never taken place." On page 226, the same author says: "The criminal lays plans for the execution of his designs; time, place and weapons are all suited to his purpose; and when successful, he either flies from the scene of his enormities, or makes every effort to avoid discovery. The homicidal monomaniac, on the contrary, for the most part, consults none of the usual conveniences of crime. He falls upon the object of his fury, oftentimes, without the most proper means for accomplishing his purpose, and perhaps in the presence of a multitude, as if expressly to court observation; and then voluntarily surrenders himself to the constituted authorities. When, as is sometimes the case, he does prepare the means, and calmly and deliberately executes his project, his subsequent conduct is still the same as in the former instance.

"The criminal often has accomplices, and generally vicious associates; the homicidal monomaniac has neither. The acts of homicidal insanity, are generally, perhaps always, preceded by some striking peculiarities in the conduct or character of the individual, strongly contrasting with his natural manifestations; while those of the criminal, are in correspondence with the tenor of his past history or character. In homicidal insanity, a man murders his

wife, children or others to whom he is tenderly attached; this, the criminal never does, unless to gratify some evil passion, or gain some selfish end, too obvious to be overlooked on the slightest investigation."

Again, in distinguishing between this disease and the sanguinary atrocities of the sane, he says, [p. 256]: "That beings in human shape have lived who delighted in the shedding of blood, and found a pastime in beholding the dying agonies of their victims, is a melancholy fact, too well established by the Neros and Caligulas of history. For such, we have no disposition to urge the plea of insanity, for though we are willing to believe them to have been unhappily constituted, we have no evidence that they labored under cerebral disease, and they certainly exhibited none of its phenomena. Motives the very slightest, no doubt, generally existed for even their most horrid atrocities; and even when they were entirely wanting, there was still a conformity of their bloody deeds with the whole tenor of their natural characters. They followed the bent of their dispositions, as manifested from childhood, glorying in their pre-eminent wickedness, and rendered familiar by habit with crime; and though conscience might have slumbered, or opposed but a feeble resistance to the force of their passions, yet it was not prevented by diseased action, so as to be blind to moral distinctions. In homicidal insanity, on the contrary, every thing is different. The criminal act for which its subject is called to an account, is the result of a strong, and perhaps sudden impulse, opposed to his natural habits, and generally preceded or followed by some derangement of the healthy actions of the brain or other organs. The Advocate General himself represented Papavoine 'as having been noted for his unsocial disposition; for avoiding his fellow laborers; for walking in retired, solitary places, appearing to be much absorbed in the vapors of a black melancholy.'.

"This is not a picture of those human fiends to whom he would assimilate Papavoine, but it is a faithful one, of a mind over which the clouds of insanity are beginning to gather. Where is the similarity between this man, who, with a character for probity, and in a fit of melancholy, is irresistibly hurried to the commission of a horrible deed, and those wretches, who, hardened by a life of crime, commit their enormities with a perfect deliberation and consciousness of their nature?"

Pritchard, in his Treatise on Insanity, page 277, refers to a case cited by Pinel, of *instinctive fury*, in which the patient experienced at first a sensation of burning heat in the bowels, with an intense thirst and obstinate constipation. This sense of heat spread, by degrees, over the breast, neck and face, with a bright color; sometimes it became more intense, and produced violent and frequent pulsations in the arteries of those parts, as if they were going to burst; at last, the nervous affection reached the brain, and then the patient was seized with a most sanguinary propensity; and if he could lay hold of any sharp instrument, he was ready to sacrifice the first person that came in his way." Further on, he quotes De La Place, as saying: "When the af-

fection has continued for some time, and the individuals possessed with the desire of committing murder have been observed, we have seen that this state is like the delirium of lunatics—preceded and accompanied by headache and pains in the stomach and bowels. These symptoms have preceded the impulse to murder, and have become more severe when this dreadful propensity is exasperated. "

Taylor, in his admirable treatise on Medical Jurisprudence, reviews the whole theory of Moral Insanity, and points out forcibly the dangers to which it exposes the administration of justice. [See Griffith's ed. pp. 514 to 519.] He refutes, with singular ability, the fallacious idea that a failure to discover a criminal's motive is to be taken as a proof of his insanity. [p. 515.] The cases of Moral Insanity referred to by all these writers, are usually instances of homicide, perpetrated by patients on those who are near and dear to them; such as a father or mother on his or her child; a husband on his wife, &c.

Now, is there the faintest resemblance in this case to those described by these distinguished medical writers? In them we find sudden, irresistible fury; here, deliberation, self-control, preparation, concealment. In them, confession; here, denial and flight. In them, a change in the habits of the individual, and conduct in opposition to all human motives; here, conformity to the whole course of Prisoner's life, and several assignable motives. In them, disease; here, perfect and uninterrupted health.

But it is urged that if the Prisoner had not Moral Insanity, he labored under an insane delusion, which led to the commission of the horrid deed for which he is called to account, and which renders him irresponsible.

What is an Insane Delusion?

Doctor Brigham, says: "An insane delusion is the mistaking fancies for realities, where the patient cannot be reasoned out of them." [p. 306.] Dr. Dimon, however, gives a much better definition. He says: "An insane delusion, is the thorough belief of the reality of something in opposition to the evidence of the senses." [p. 344.] An instance or two will illustrate this. Hadfield had an insane delusion that he heard the voice of God commanding him to take the King's life. Sidney Freeman, the Prisoner's uncle, had an insane delusion that Jesus Christ was in his throat, choking him. [p. 350.] The rule of law which acquits a party of responsibility where he is incapable of distinguishing between right and wrong, would, no doubt, exonerate him who was compelled to the commision of an act by an insane delusion. Such a delusion would lead him to the belief that he was doing right, and thus destroy his reason; and it is an inevitable characteristic of this insanity, that the subject of it should avow and glory in the act to which it impels him, and that he cannot be reasoned out of the belief that he did right. Now, gentlemen, I should affront your intelligence, if I entered upon an argument to show that no such delusion exists here. The Prisoner thought he was entitled to pay for the time he lost in prison; other prisoners think the

same thing. He thought he was wrongfully imprisoned; all prisoners say this. A misapprehension of legal rights is not an insane delusion; if so, many lawyers and clients are insane. Discontent with imprisonment is not insanity; else, all prisoners are insane. The Prisoner's Counsel contend that Prisoner knew Van Nest had no connection with his imprisonment; if this is so, there is no connection between the delusion and the crime. The Prisoner never supposed he was doing right. He fled, fought when arrested, denied all knowledge of the crime, and now tells Dr. Austin, "if they will let me go this time I'll try to do better!" [p. 250.] There is, therefore, no pretence for saying that this Prisoner has now, or ever had, an insane delusion.

I have thus called your attention to the various kinds of insanity, and endeavored to show you that this Prisoner has none of them, because this is the question which he submits to you, and on which the laws of the land make it your duty to pass.

I hope I have satisfied you that this Prisoner is clearly responsible for his acts. He is not an idiot. This is not pretended. He has not dementia. His attention, coherence, memory of events, ancient and recent, keen and steady glance, healthy appearance—all triumphantly repel the idea of dementia. He had no disease when these murders were committed, nor has he now. He has never had an insane delusion. If there was nothing but the atrocity of this case, and the unwearied pains that have been taken to acquit this prisoner, calling for this careful examination of the law and facts in this case, I should cheerfully have gone through with it. But even higher objects than this demanded this labor. Doctrines have been advanced by counsel and witnesses in the course of this trial, dangerous to the peace of society and fatal to good government. The laws and institutions under which we live have been assailed. The maxims of law which have emanated from the wisest and most humane jurists that ever lived—maxims on which the security of liberty, property, and life have reposed for ages; which the successive wisdom of centuries has confirmed, and under which the safety of Prisoners, as well as of society, has been protected—are now openly derided and defied. This generation is claimed to be wiser in the elementary principles of law than all that have preceded it. The representatives of medical science on the witness' stand, over-ride and swear down, not only the laws of the land, but the most profound and accomplished treatises on medical science itself. They seek not only to expel the Judge from the bench and the Jury from the box, but would banish common sense and the highest scientific attainments alike from this Court. And what great good is thus to be accomplished? Let the experience of the past answer.

Last winter a convict in the State Prison, named Henry Wyatt, assaulted another convict with one blade of a large pair of shears; he plunged it in his bowels; the unhappy convict swooned and died. In March last, Wyatt was tried for this murder; the defence was moral insanity; the Jury disagreed.

Wyatt has been tried again at this term, and convicted; but on his first trial in March, this Prisoner was present and seemed to be an attentive listener. He is undoubtedly hard of hearing, but Mr. Andrus swears he thinks Prisoner heard his testimony during this trial, and gives his reasons. [p. 328.] Munroe thinks he can hear his testimony, [p. 334]; and Dr. Bigelow thinks he knows what is going on in Court. [p. 351.] He went, during the trial, to Mrs. Godfrey's, to demand a settlement for his wrongful imprisonment. Mrs. Godfrey testifies to this. [p. 235.] He was then boarding with the wife of his associate in the theft. David Winner so states. [p. 259.] A few days after, he changed his residence to Mary Ann Newark's, and committed these foul murders. Now, is there not reason to fear that this depraved criminal may have caught from the theories broached on Wyatt's trial, and from the result, an impression that he could commit this crime with impunity? Far be it from me to suggest that the distinguished Counsel or witnesses on that occasion ever imagined or contemplated such a frightful consequence. But is it beyond the range of possibilities? And, whether true or not, is it not the imperative duty of those charged in any way with the faithful execution of the laws, to remember that the audience who throng a Criminal Court Room, are not exclusively composed of the upright, the intelligent or the humane, and when theories are advanced in such a presence, which strike at the root of Law and Order, and furnish a perfect license for Crime, by rendering its detection impossible, to sift them thoroughly, and if as unsound as they are dangerous, to condemn them publicly and boldly? It needed not the fearful conjectures as to the origin of this crime, to induce courts, juries and public prosecutors, by every just means, to extinguish sparks which threaten such wide-spread conflagration.

I have canvassed freely the testimony of men eminent for their learning and integrity. I have even ventured within the walls of their peculiar mysteries, and challenged their skill in their own departments and professions. You must also do this. For while the law allows their testimony to be given, (and never was greater lattitude given to it than on this trial,) the same law makes it your duty, at last, to pronounce, on the whole evidence, the guilt or innocence of the Prisoner. And before I commit the case to you, let me ask your attention to the simple, uncontradicted facts which have been proved to you. It is on these that your verdict must rest, and by these it must be justified. They lie within a narrow space, and there is no conflict of evidence in regard to them. Dismiss, I beg of you, while I do so, all theories and ideas of insanity, and regard this Prisoner as a man whose acts immediately prior to the 12th of March, on that day, and the next, you are required to render a verdict on. Apply to them the rule of law I have stated. It is one perfectly simple in itself, abundantly sustained by authority, and covering every conceivable case of criminal irresponsibility:—DID THE PRISONER KNOW THAT HE WAS DOING WRONG,

AND WAS HE IN A STATE OF HEALTH THAT GAVE HIM CONTROL OVER HIS ACTIONS ?

JOHN G. VAN NEST was killed on Thursday night, the 12th of March last. On Sunday, a fortnight before, prisoner, drove out to Harry Lampkin's public house, with three other colored persons, whom he treated and drank with. [p. 338.] On the Thursday before the 12th, this prisoner, then living about half a mile from here, at the New Guinea settlement, with the colored woman, Mary Ann Newark, went to the shop of Joseph Morris, a blacksmith, *who had never seen him before*, and asked to have a knife made. He desired it of good cast steel. Failing to make Morris understand the precise description, he went to a carpenter's shop, and in about fifteen minutes made a pattern of wood, which he left with Morris. This is it. [Holding up pattern of knife in wood.] Morris charged him four shillings for it—he offered two shillings. He then offered four shillings for the blade, if Morris would grind it and put a handle to it. Morris said to him: "What do you want to do with the knife ?" Prisoner did not answer. Morris then said: "You want to kill somebody, don't you ?" Prisoner said: "*It is none of your business, so long as you get your pay for it.*" Morris was told he was deaf, and spoke louder to him than ordinarily. He bought no knife of Morris. [pp. 190, 191.] On the Monday before the murder, at nine A. M. he went to George W. Hyatt, another blacksmith, *who had never seen him before*, to buy a knife. He had been in before Hyatt saw him. He selected a knife of which the price was two shillings or three shillings. He asked Hyatt if he could not afford it for one shilling and six pence. Hyatt eventually sold it to him for one and six pence. He handed Hyatt two shillings and received six pence back. He then asked to have a handle put on, and a ferule to keep the handle from splitting, which was done. He wanted it ground, which was done by Hyatt and himself on a grind stone. He went off with the knife and returned at twelve o'clock, with a Jack Knife, the blade of which was out. He asked the price of putting in a rivet. Hyatt answered six pence. He wished it done for three cents. Hyatt agreed to make the rivet for three pence, if Freeman would put it in. This was assented to. Hyatt made the rivet, and prisoner riveted it in the handle. He handed Hyatt six pence and received three cents in change. Hyatt discovered that he was hard of hearing; but it is a remarkable fact when this witness, who had sold him the bloody instrument of assassination, called on him three weeks afterwards in Jail, and asked prisoner twice, in a very loud voice, at a distance of three or four feet, if he knew him, prisoner leaned forward and would make no reply, except that he *was deaf and couldn't hear !* [p. 190.] Mr. Andrus he heard well, and conversed with at the same distance ! [p. 328.] A day or two before the murder, prisoner went to Robert Simpson, a turner and chair maker, and asked him to grind the knife he bought of Hyatt. Simpson had no time to do it, but arranged

the grindstone for him, and he ground it for himself. He afterwards rubbed it upon an oil stone, paid three cents to Simpson, and went off. We offered to show that at this time other colored men were at work in this neighborhood, killing hogs, but the testimony was objected to and excluded.

On the morning of the murder, or the day before, prisoner again came in Simpson's shop with a hickory club; asked permission to use a brace and bit which was granted; put the club in the vice and went to boring in the end of it; seemed to be fitting something in, which Simpson could not see; went off; was gone twenty-five or thirty minutes; returned, and asked for a larger bit, which was loaned to him and used in the same way. He confesses to Dr. Bigelow that he fitted a blade in the end of that club, at the house where he staid. Doubtless this was done between the two visits to Simpson; and in doing so he found that the first hole bored was too small. He also confesses that he took the knives up to the house where he boarded, and hid one under his pillow and the other under his bed. [p. 211.] They were so carefully concealed that Mary Ann Newark, with whom he boarded, never saw him have a knife or stick, and never saw any about his room. [p. 282.] About the same time he was, on several occasions, drinking at Gale's grocery, and the very night before the murder he was at a ball at Laura Willard's. [p. 239.]

We now come to the day of this deplorable tragedy. Simpson is uncertain whether the preparation at his shop was the day or the day before the murder. The two main witnessess who speak of the Prisioner on that day, before the murder, with certainty, are both colored; one called by us—Aaron Demun, the Prisoner's uncle, and as honest a man as any in Auburn; the other called by defendant—also perfectly honest—Mary Ann Newark, with whom Prisoner boarded. One witness—a grocer—testifies that Prisoner purchased of him three cents worth of soap, handed him six pence, and received three cents change. Aaron Demun testifies that on the same day, Prisoner came to him and asked for tallow to grease his boots, which was given him; said he was going to hire out by the month with some farmer. (He had been previously to Van Nest to hire out.) His uncle advised him to do so. Prisoner said: "Uncle Aaron, you've a good place here; are you to work here steady?" Demun said, Yes. Demun told him that if he did'nt get more than seven or eight dollars a month, he had better take it; and says: "*he talked as rational with me the day of the murder as he ever did.*" [p. 324.] Mary Ann Newark says he staid at her house till the bells were rung for meeting, at six o'clock in the evening. He put snow in the tub for her; asked if she had any other chores to do; she did not notice him go off; she thinks he was sober. [p. 281.] You will remember that he boarded at her house; or rather, as he described it to his uncle, and as she swears, [p. 282,] he didn't exactly board. "I bring my provisions," said he, "and she cooks for me." [p. 324.] She says she lent him the cooking utensils, and he cooked for himself. He admits to Ethan A. Warden that

on that afternoon he drank a pint of liquor, [p. 267]; and he admits to Dr. Bigelow that he went up stairs; threw his knives out of the window: hid them under the wood-pile till he was ready to start; then stood around and thought of it awhile; then concluded to go, any how; got his knives, secreted them in his breast and under his coat, and started. [pp. 211, 214.]

Van Nest lived about four miles from here, on the Owasco Lake, in a secluded dwelling. Next this side of him, lived his father and mother. Mrs. Van Nest swears that she saw a black man twice in her yard that evening, between eight and nine o'clock. This was no doubt the Prisoner. About the same hour Cox met him this side of Van Nest's. [p. 293.] At nine o'clock he was around the house of John G. Van Nest. He went past it on the road. Patten met him. There was then a light in Van Nest's house. Williamson was spending the evening there, and Van Arsdale, the laboring man, had not yet gone to bed. [p. 194.] He admits that he did not enter, because it was too early, and he waited till he saw Williamson leave. [p. 345.] He must also have seen Van Arsdale, from the back window, when he retired. He then entered the house by the back door, as he had done on the Monday but one previous. It is doubtful whether he stabbed Mrs. Van Nest (who was in the yard) first, or Van Nest. He asserts that he killed Van Nest first. Helen Holmes and Van Arsdale both think they heard Mrs. Van Nest shriek before they heard any other outcry. [pp. 198, 200.] Van Arsdale heard Van Nest say:—"*What do you want here in the house?*" [p. 200]; and in an instant, almost, he heard him fall upon the floor. The door at the foot of the staircase was then opened by Prisoner, who inquired if there was a man up stairs. Van Arsdale said, Yes; and Prisoner rushed up with this knife, and aimed a blow at him, which was so nearly fatal. Van Arsdale knocked him with the candlestick, pushed him down stairs, and beat him out of the house with a broom-stick. The child, George W. Van Nest, slept in the room where Van Nest was killed. The Prisoner stabbed him entirely through, and with such force as to pierce the bed. He must have done this before he attacked Van Arsdale. Outside of the house he had a scuffle with Mrs. Wyckoff, the mother-in-law of Van Nest, who attacked him with a carving knife. He stabbed her in the abdomen and cut one of her fingers; she disabled him by a cut on the wrist. He returned to the sitting room; kicked open the door; saw Helen Holmes and perhaps Van Arsdale still living.

After lurking about the house a little time, looking in at the windows, he stole a horse and fled. The horse took the road to McFarland's instead of to Auburn. At the distance of about a mile from Van Nest's house, as Williamson testifies, Prisoner turned him, after going about a rod, and brought him on the Auburn road. When he arrived within a mile of Auburn, the horse fell with him and hurt his leg; he stabbed and left him, and stole Burrington's horse. With this he fled, as he tells Bostwick, the most he cared for being to get out of the county. [p. 293.] He fled in the direc-

tion of Canada, to the De Puys, who were connections of his by marriage. They turned him out of the house, suspecting that he stole the horse.

At two o'clock on Friday afternoon, (the murder having been committed at half past nine o'clock Thursday evening,) we find him forty miles from Van Nest's. He offers the horse for sale to Amos, Corning and others, for eighty dollars, its precise value. When charged with stealing the horse, he denies it, and says he had a horse given him, and traded round till he got this one. He reminded Amos of his having seen him at a husking bee, and offered to satisfy him, by the De Puys, that it was all right. He begged to be allowed to go on; refused to let go of the halter; fought; tripped up Amos, who endeavored to detain him, and finally regretted that he *had not a knife to gut him!* [Testimony of Amos, pp. 203 to 207.]

To Taylor, who arrested him for the murder, he denied all knowledge of it, but then admitted stealing the horse. [p. 207.] He was then taken into a room by Messrs. Parker and Herrick—the former being a friend and acquaintance of Van Nest. They affected to know all about the murder, and urged him to confess. He denied all knowledge of Van Nest. When asked how his hand was cut, he for a long time declined answering, and at last said he had a knife and was whittling with it, and cut himself. When asked where he came from last, he said, "from Phœnix;" where before that, he said, "Syracuse;" where before that, he said "Nine Mile Creek;" where before that, he said he "believed they called it Elbridge;" where before that, he declined answering; and when asked if it was Sennett, he said: "I SHAN'T ANSWER ANY MORE; IF THEY CAN PROVE ANY THING AGAINST ME LET THEM PROVE IT!" The answers already given by him had correctly described his route from Burrington's to Gregg's, where he was arrested; it was only when he got back to the scene of the murder, that he refused to answer. [Testimony of Parker, pp. 209 to 211.]

He pretended to be deaf! Taylor once, by inquiring why he murdered that little child, got an answer that he did not know it was a child. At other times, he said to E. A. Warden that he murdered the child to make them feel more; and to Lynch, that he murdered it for fear it would make a noise. [p. 323.] Pressed by Vanderheyden, on one occasion, as to the cause of the murder, he said: "I don't want you to say any thing about it;" and being urged, he says: "YOU KNOW THERE IS NO LAW FOR ME." [p. 331.]

He was taken from Gregg's to Van Nest's house, and identified by Van Arsdale, who was still living. This he understands thoroughly; and from that day to this, he has known perfectly that no admission of the murder itself could prejudice his case. He stated to Dr. Bigelow that he had seen Van Arsdale since the murder, alive. [p. 215.]

Now, is not this a picture of as cool, deliberate, atrocious murder as was ever presented in a Court of Justice? Was ever preparation more careful? Buying knives of those who did not know him; hiding them; falsely stating to Aaron Demun where he was going; lying in wait; stealing; flying;

lying. Was ever self-control more absolute? He did not molest Cox or Patten, whom he met the same evening; he knew Van Arsdale was up stairs, and inquired for him before mounting the steps; he fled when struck, and was beat out of the house with a broom-stick; he knew whither he was flying; he checked the horse, when taking the wrong road. He knew he did wrong; else, why fly? why steal? why refuse to give himself up? why lie?

No comment can add to the force of a simple narration of the uncontradicted facts in this case. They show, beyond the possibility of doubt, that FREEMAN KNEW HE WAS DOING WRONG, AND HAD FULL CONTROL OVER HIS ACTIONS.

Gentlemen of the Jury: I have thus gone through with the evidence in this case; and I cannot but believe that it has left upon your minds the same conviction of the Prisoner's guilt that it has upon mine. It is a fearful task, in a capital case, to urge the conviction of a Prisoner; but I never remember a case in which I could ask it with more undoubting confidence than in this. There are upon this Jury three gentlemen who were challenged by me, and who, before they entered the box, admitted that they belonged to a class termed abolitionists. [pp. 165, 166.] I have not supposed that this rendered them incompetent to sit in this case; but I desired to know whether they entertained any peculiar views in regard to the general neglect of the colored race, which would induce them to hold society, and not the individual, responsible for the crimes which this race commits. Finding that they were disposed to try this case precisely like that of a white man, I have withdrawn the challenge, and am now gratified to believe that these gentlemen will protect the Prisoner from all injustice; at the same time they will remember that the cause they advocate can receive no greater injury, and themselves no deeper disgrace, than would flow from their refusal to convict a murderer whom they know to be guilty.

John G. Van Nest, gentlemen, was, as I learn, in every respect one of the most estimable men in this community. He resided with his wife's mother, Mrs. Wyckoff, and, as his aged father testifies, was all that father's dependence in his old age. He, his wife, his mother-in-law, and one of his children, have been slain by this monster in human shape. I know there is always a disposition to forget the dead over whom the grave has closed, and to sympathise with the living criminal, no matter how debased and degraded. But I cannot believe that when such a man as John G. Van Nest is cut off in the prime of life, with every thing about him to make the world attractive, and sent, without an instant of preparation, to stand before his Maker, that a jury of his neighbors and friends will set at large the instrument of his destruction. It is to me, as you must know, a matter of no concern, personally. The Van Nests were unknown to me; and although the heart of this family tree has been cut out, leaving behind nothing but the dependent branches and decaying roots, I have lost neither acquain-

tances nor friends. This miserable Prisoner can excite no antipathy; he is unworthy of the hostility of any human being. The danger to the peace of this community only affects me, as a lover of good order. If crimes of this magnitude are to go unpunished, and thus to invite imitation, it is your hearth-stones, not mine, that may be drenched in blood. But I do confess to a feeling of pride at the administration of justice in our State. Elsewhere, the murderer may go at large as a Somnambulist, an Insane Man, or a Justifiable Homicide. But in New York, thus far, the steady good sense and integrity of our Juries, and the enlightened wisdom of our Judges, have saved our Jurisprudence from ridicule, and firmly upheld Law and Order. Thus may it ever be; and I feel entire confidence, notwithstanding the extraordinary appeals that have been made to you in this case, that your verdict will be in keeping with the high character our tribunals have thus acquired, and will prove that the Jurors of Cayuga fully equal their fellow citizens of other counties, in intelligence to perceive, and independence to declare the guilt of a criminal.

NOTE.—MR. VAN BUREN having been applied to by one of the Counsel for the Prisoner, as well as by the Printers who are publishing a report of the trial of William Freeman, and the gentleman who assumes the responsibility of it, to furnish a sketch of his remarks on that occasion, desires to say in explanation, that he has had no participation in suggesting or preparing this publication; that he has only seen the portion of it beginning at page 145 and ending at page 368; and in that are contained several passages that do not conform to his recollection of the actual occurrences on the trial. He learns, however, that the publication is so far advanced that no alteration can be made; still he cannot omit to correct an error which occurs at pages 290, 314 and 315, and which was embodied in the Bill of Exceptions afterwards made in the cause. Mr. Van Buren is there made to insist that the verdict of the Jury which tried the *preliminary issue* of sanity, as it was called, determined conclusively the Prisoner's sanity at the time of his trial for murder, and could not be contradicted by evidence. This, he says, is an entire misapprehension; and that a brief statement of facts will show what questions arose in this connection. Our Statute provides (as the common law did) that no insane man shall be tried, [2 R. S. 697, sec. 2]; but it does not provide how his insanity shall be tested. The Prisoner was brought up for arraignment the first Monday of June, 1845, before Mr. Van Buren reached Auburn. His Counsel, W. H. SEWARD, said in his behalf, that he was insane, and filed a written statement to that effect, which he denominated "a plea of Present Insanity," and which he claimed to have tried by a jury. To this the Court acceded. The Prisoner was then remanded. HENRY WYATT was then put on trial for another murder; defended by Mr. Seward and others, on the ground of insanity; convicted on the 23d of June, after a trial of some three weeks; and subsequently executed. FREEMAN was then placed at the bar; a jury empanelled to determine whether he was then sane or insane; and after an examination of witnesses and addresses of Counsel, which occupied the Court till the 6th day of July; the Jury made a written statement to the Court, in these words: "We find the Prisoner at the bar sufficiently sane in mind and memory to distinguish between right and wrong." They were then discharged and the Prisoner arraigned and tried. This preliminary proceeding was objected to by Mr. Van Buren, and was regarded by him, in substance, as a motion to postpone the trial on the ground of the Prisoner's insanity. It was merely intended to satisfy the Court as to the propriety of proceeding with the trial, and settled nothing except that the trial should be proceeded with. Every fact important to the Prisoner's defence, and proper to be given in evidence, was just as admissible afterwards as before; and as to the sanity of the Prisoner at the time of the trial, a reference to pages 294, 307 and 311, shows that Doctors BRIGHAM, MCCALL and COVENTRY, as well as others, testified in regard to it. The ground taken by Mr. Van Buren at the trial, was, that in judging of the insanity of the Prisoner on the 12th of March, when the murder was committed, the witnesses might be allowed to testify to any acts or declarations of the Prisoner himself, from the date

of his birth till after the defence of insanity had been interposed; that some time must be fixed when examinations of the Prisoner should cease, or it was obvious that the visits to his cell would continue as many nights as there should be succeeding days to testify to the results of the nightly visits. For this object he requested the Court to fix the 6th of July as a suitable time at which to stop the manufacture of this species of testimony; and with the same view he requested the Sheriff to prevent access to the Prisoner's cell, as testified to, except under the permission of the Court. The objections to the testimony of Doctors HUN and MCNAUGHTON, as a reference to the authorities cited will show, proceeded on the ground that physicians who had not heard the whole trial, and who were precluded, by the rule adopted by the Court, from giving the facts on which their opinions were based, should not be allowed to give their opinions. With this brief explanation, and the apology that it is utterly impossible, with a press of other engagements, to give more than a sketch of an address to a Jury delivered nearly two years since, occupying eight or ten hours in the delivery, and substantially without notes, Mr. Van Buren commits his remarks to the publisher and the public. In commenting on the testimony he has, in some instances, referred to the page where the testimony is given; in others, he has been governed by his own recollection of the case and notes of the testimony taken by himself. J. V. B.

JUDGE WHITING'S CHARGE.

GENTLEMEN OF THE JURY:

The prisoner, WILLIAM FREEMAN, stands indicted before you, for the murder of JOHN G. VAN NEST, on the 12th day of March, 1846.

The questions for you to determine, are, *first*, Is John G. Van Nest dead; *second*, The cause of his death; and *third*, Was it the act of the prisoner.

The death and the cause of the death of Van Nest, are testified to by Doctor Pitney. In his opinion, the wound must have caused almost instantaneous death; and the facts sworn to by other witnesses, show that he fell dead at the place where he received the wound.

Was this wound inflicted by the prisoner? You are to judge of the evidence bearing on this point, and it will probably satisfy you that he gave the fatal stab.

The next question is, if you find that the wound was inflicted by the prisoner, is this murder? [The Judge then gave to the jury the definition of murder as contained in the statute, and called their attention to the evidence, as bearing upon the premeditated design of the prisoner; the malice, personal or general, by which he may have been moved; the deliberation with which the act was committed; the means used, and the instruments prepared to effect his purpose; his concealment of the instruments at the house where he boarded; the time and the occasion of his committing the act; his flight, and larcenies of the horses, and his denial of his guilt when overtaken; and if, from a consideration of this evidence, the jury should find that the killing of Van Nest was murder, then the jury were to consider the defence set up by the prisoner, to wit: that he was insane at the time of committing the act, and is not responsible for it.]

It is true, that if the prisoner was insane at the time of committing the murder, he is innocent of crime, and must be acquitted. To present this question to the jury in its proper light, they will consider that sanity consists in having a knowledge of right and wrong, as to the particular act charged to have been done by an individual, and in possessing memory, intelligence, reason and will.

Knowledge of right and wrong as to the particular act charged. This is the true rule of responsibility. Not that the accused shall have knowledge on all subjects, or on any particular subject save that charged against him. The knowledge of men is in a great measure proportioned to their opportunity of acquiring it; and as that is unequal, there can be no standard safely assumed, by which to test responsibility, other than that of knowledge of right and wrong upon the specific act charged as a crime.

Intelligence to know that the act he is about to commit is wrong.

Memory to remember that if he commits the act he will be subject to punishment.

Reason and *will* to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it.

These considerations are consistent with the legal definition of the crime of murder; that is, that it must be committed with a deliberate design to effect the death of the person killed. Crime is the result of will, and is always charged to have been *wilfully* committed.

The law presumes every man sane until the contrary be proved, to the satisfaction of the jury. Insanity is, therefore, a fact to be proved like any other fact, set up or plead by way of defence.

To establish the plea of insanity, it must be clearly proved that the party is laboring under such a defect of reason, from disease of the mind, as not to know the nature of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. He must be laboring under that kind of mental aberration which satisfies the jury that the prisoner was quite unaware of the nature, character and consequences of the act he was committing. If some disease was the acting power within him, which he could not resist, or if he had not sufficient use of his reason to control the passions which prompted the murder, he is not responsible; and the jury must be satisfied that it was an absolute dispossession of the free and natural agency of his mind.

So, if his moral and intellectual powers were so deficient that he had not sufficient memory, will, conscience, or controlling power, or if, through the overwhelming violence of mental disease, his intellectual power was for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts.

Within this rule, is the prisoner clearly proved, to the satisfaction of the jury, to have been insane on the 12th of March, at the time of the murder?

And to decide this, the jury are to look at the conduct of the prisoner before, at the time, and after the commission of the act, and give effect to the proof as bearing upon the state of his mind on the day of the murder.

If sane, he is guilty. If insane, he is not guilty. There is no middle ground.

Then, was the prisoner unaware, *first*, of the nature of the act he committed; *second*, of the character of that act; and *third*, of the consequences of it.

If the jury find that he was unaware, from insanity, of the nature of the act he committed, the prisoner should be acquitted. If disease was the acting power within him, which he could not resist, he should be acquitted. If he had not sufficient use of his reason, from insanity, to control the passions which prompted the murder, he is not responsible. If the jury are satisfied that there was a dispossession, by disease, of the free and natural agency of his mind, he is not responsible.

The classification of insanity by learned men, has no influence in determining the question whether the prisoner was sane or insane; for if insane, he must be acquitted, without regard to the particular form of the disease.

Ignorance is not insanity. The law does not require any degree of knowledge to render a person responsible, beyond that of knowledge of right and wrong, under the rules already explained.

The evidence of the prisoner's insanity is derived from three sources: *first*, from comparison; *second*, from facts; and *third*, from opinions of medical witnesses.

1. From comparison with himself. It would be idle to decide upon the soundness of his mind, by expecting or looking for knowledge and intelligence in him, about matters of which he had never learned any thing. He must be taken in his own grade of life and intelligence, to determine whether in that, he has reason, judgment, memory and consistency of conduct.

And of his comparison with other men. Those with whom he is compared should be of his own grade, ignorant and uneducated, but who yet have a knowledge of right and wrong, and whose lives and conduct are under the control of conscience and reason, though in a low degree.

2. From facts in the case, which relate principally to his appearance and conduct not being feigned; to the change in him since his boyhood; to his reading and counting; to his hearing; to the breaking the knife in prison; to his sleeplessness; to his buying the steak; to the family insanity; to his stupidity; to his ignorance of and indifference to his fate, and the proceedings of his trial; to his habits of silence; to the expression of and smile on his countenance; to his want of early education; to his conviction and imprisonment in State Prison at an early age; to his treatment in prison; to his assertions of his innocence and wrongful imprisonment; to his claim of pay, and its refusal; to his opinion that he was entitled to pay for his time; the murders because of refusal to pay him; to his larceny of the horses and

his escape; riding into Mrs. Godfrey's yard; his denial of the larceny to Amos and others; his denial of the murders; his being confronted with the dead, and with his accusers; his committal to jail; his confessions there, and the manner of them; his simplicity; his memory of events; his mode of talking, and of relating his story.

The jury should also inquire whether the prisoner was laboring under a delusion; and the Judge presented to them the case of Kleim, tried at the Oyer and Terminer in New York, and who exhibited evidence of delusion, and an apprehension of danger, indicating an unsound mind; and after explaining to the jury the state of mind in relation to that form of insanity, submitted to the jury whether the acts of the prisoner at the bar were the effects of delusion, or of an unsound and erroneous judgment as to his rights, and the way of redressing his supposed wrongs; and that, in the latter point of view, the jury should consider the proof in regard to his uniform assertion that his conviction and imprisonment had been wrongful and unjust, because he was innocent of the crime of stealing the horse; his opinion that he ought to be paid for his time in prison; his demand of that pay of Mrs. Godfrey, the owner of the stolen horse; her refusal of payment; his calls on the magistrates for process to compel payment, and their refusal of it; his declarations that the people had taken his time and labor, and would not pay him; that they ought to pay him; that there was no law for him; then his preparation of the fatal knife, and other weapons; his conduct on the night of the murder; his concealment of the prepared weapons under the wood; his answer to Dr. Bigelow's question—what he did in the house when he went in after hiding the weapons—"Nothing, but I stood round there, and thought about it. I did not know what to do; but I thought I'd go, any how."

3. Opinions of medical witnesses.

The opinions of medical men, on a question of this description, are competent evidence, and, in many cases, are entitled to great consideration and respect. This is not peculiar to medical testimony, but is a general rule, applicable to all cases where the question is one depending on skill and science in any peculiar department.

In general, it is the opinion of the jury which is to govern, and this opinion is to be formed upon the proof of facts laid before them. But some questions lie beyond the scope of the observation and experience of men in general, but are quite within the observation and experience of those whose peculiar pursuits and professions have brought that class of facts frequently under their consideration.

Upon this ground, the opinions of witnesses who have been conversant with insanity in its various forms, and who have had the care and superintendence of insane persons, are received as competent evidence, even though they have not had opportunity to examine the particular patient, and ob-

serve the symptoms and indications of disease at the time of its supposed existence. It is designed to aid the judgment of the jury, in regard to the influence and effect of certain facts, which lie out of the observation and experience of persons in general. And such opinions, when they come from persons of great experience, and in whose correctness and sobriety of judgment just confidence can be had, are of great weight, and deserve the respectful consideration of a jury. But the opinion of a medical man of small experience, or of one who has crude or visionary notions, or who has some favorite theory to support, is entitled to very little consideration. The value of such testimony will depend mainly upon the experience, fidelity and impartiality of the witness who gives it.

They (medical witnesses) are not to judge of the credit of the witnesses, or of the truth of the facts testified to by others. It is for the jury to decide whether such facts are satisfactorily proved; and if they are proved to the satisfaction of the jury, then they (i. e. medical witnesses) should be asked whether, in their opinion, the party was insane, and what was the nature and character of that insanity.

The opinions of persons not educated to the profession, but who have been so situated as to have given particular attention to the disease, and to patients suffering under it, are also competent evidence, but not to the same extent as those of medical men of the same experience.

This evidence, from these sources, applies on the one hand to the state of the prisoner's memory; to his knowledge and intelligence; to his conduct in life; to the state of his conscience; to his power of comparison or reason; to his judgment and to his motives of revenge; and, on the other hand, to the delusion under which he may have labored; to the disease of his mind, and the character of that disease; to his personal appearance; to the expression of his countenance, and to his indifference to his fate.

The evidence bearing on the issue of insanity, is derived from sixty-five witnesses, seventeen of whom, including nine physicians, testify that, in their opinion, the prisoner was insane when the murder was committed; and the residue of them, including eight physicians, testify that, in their opinion, the prisoner was sane. The number of witnesses who have given opinions is referred to, not for the purpose of governing or influencing the minds of the jury, but for the purpose of cautioning them that it is not the *number* of witnesses that should control or decide this question, so momentous to the prisoner, but it is the intelligence, the skill, the integrity, and the opportunity of acquiring correct and reliable information upon the subject of his opinion, that gives weight and value to the testimony of a witness. And if the jury should judge of the evidence by any other rule than this, they would do great injustice to the prisoner as well as to themselves.

And if the jury, weighing the evidence in this light, under the solemn responsibility resting upon them, both to the people and to the prisoner at

the bar, find the prisoner was insane on the 12th day of March last, they will render a verdict of not guilty, by reason of insanity. And if they find that he was sane, and that he killed John G. Van Nest, by the means laid in the indictment, then they will find him guilty.

After the delivery of the foregoing charge, the Jury retired in charge of sworn constables, for consultation, and upon being returned into court on the 23d day of July, 1846, say they find the prisoner at the bar GUILTY OF THE CRIME WHEREWITH HE STANDS CHARGED IN THE INDICTMENT.

His Honor, the Circuit Judge, then announced that the Court would pronounce sentence upon the prisoner the next morning at half past six o'clock, to which time the Court would stand adjourned.

JULY, 24TH, 1846, 6½ O'CLOCK, A. M.

The Court convened pursuant to adjournment. The prisoner was brought up by the sheriff, assisted by his deputies, to receive the sentence of the Court for the murder.

After the usual proclamation, His Honor, the Circuit Judge, proceeded to inform (or to try to inform) the prisoner that he had been found guilty of murder by the Jury before whom he had been tried, and to inquire of him whether he had any thing to say why the sentence of the Court should not be pronounced against him; to all which he made no reply. His Honor then proceeded to announce the sentence of the Court in the following words:

SENTENCE OF THE PRISONER.

When the prisoner at the bar was brought up to be arraigned, Mr. Seward in his behalf put in a plea alleging that he was then insane. To this plea the District Attorney took issue. By law an insane man cannot be tried; and hence it became the duty of the Court to determine the truth of that plea before putting the prisoner on trial upon the indictment. The jury found that the prisoner was sane. He was then arraigned upon the indictment, and the plea "not guilty" put in; and the trial proceeded, the result of which has been a conviction of the prisoner upon the indictment for the murder of John G. Van Nest.

The prisoner is a negro of the age of twenty-three. At the age of sixteen he was engaged in petty thefts, and in 1840, was convicted of stealing a horse of Mrs. Godfrey, for which he was imprisoned five years in the State Prison. This term of imprisonment expired in September, 1845, when he was found to be deaf, and impressed with an idea that he had been wrongfully convicted, and was entitled to compensation for his time and labor; and upon his discharge, he called on Mrs. Godfrey, to settle; and on her refusal to pay him, he applied to two magistrates for process against her,

and the other persons who had been instrumental in his conviction. These applications being refused, he appears to have reasoned himself into a belief that the laws of the country afforded him no protection against oppression and injustice.

He then prepared a butcher knife, and a club with a knife inserted in the end, and on the night of the 12th of March last, soon after nine o'clock, approached the house of the deceased; there lay in wait till he saw a man, who had passed the evening with the family, leave for his home; and then meeting Mrs. Van Nest, who had retired to the yard, stabbed her, so that she died in a few moments; then entered the house and stabbed Van Nest to the heart, of which he instantly died; thrust the knife through the body of a child, two years old, while asleep in the bed; attacked and wounded Van Arsdale, who had retired to the chamber; and at the door and gate attacked and wounded Mrs. Wyckoff, the mother of Mrs. Van Nest, of which she died on the fourteenth day of the month;—thus destroying the lives of four persons, with savage ferocity and cruelty, and endangering that of the fifth.

He then stole a horse from the stable, which fell with him after being rode about two miles. He then proceeded a short distance, when he stole another horse, and escaped to the town of Schroeppel, in Oswego county, where he was arrested.

In the defence of this wretched man, some of the best talent of the country has been faithfully exerted, and the attendance of medical men from Albany and Utica, procured to testify as to his insanity. A large number of respectable men, some of whom had known him from childhood, both in and out of the prison, have testified that they never had discovered or suspected any thing like insanity in his conduct before the murder. And after hearing all the proof adduced to sustain his defence of insanity, at the time of the murder, an intelligent and conscientious jury have decided that he was not insane, but a responsible man.

In this opinion the Court unanimously concur; so that the prisoner has been found to have been sane when put upon his trial, and also at the time of committing the murder. No serious question as to his guilt, in committing the murder, has been raised. His whole defence has rested upon his alleged insanity. And after twenty-four men have said upon oath he is sane, it is to be hoped that those who have heretofore doubted it, will yield to an opinion thus carefully formed and solemnly expressed.

This degraded and ignorant felon, who has consummated his wickedness by these atrocious murders, has had the benefit of two verdicts. Let it not be said that the administration of justice is partial or predjudiced by reason of his color, his social degradation, or his monstrous crimes. Slow and tedious as these proceedings have been, the Court are certain that in the minds of all reflecting men, a confidence will arise in the power of the laws

to protect the rights of our fellow citizens, and that the result will reflect honor upon the institutions and laws of the country.

A family of high respectability; of great moral worth; having numerous connections and relations; independent in circumstances, and in the full tide of life, have been cut off in a moment, at their own fireside, where they reposed in security and peace, by this degraded and malicious man. That the public mind was excited and the public indignation freely expressed, was natural; and most creditable it is to the love of order which prevails in the community, that no violence was perpetrated upon his guilty head All can now see that if the guilty are left to the laws, there is power in their provisions, and fidelity in their execution, to protect all and any interest of society.

The lessons to be drawn from this tragic event are many. The most impressive one is, that there is a duty upon society to see to the moral cultivation of the colored youth, now being educated for good or evil in the midst of us. This is so obvious that it needs no comment.

While we give full effect to the plea of insanity as an excuse for crime, we learn, with great satisfaction, that there is, in the common sense of the community, intelligence enough to discriminate between acts originating in moral depravity and ignorance, and those which proceed from the impulse of disease. The rule by which a man must be judged, is whether he had knowledge of right and wrong in regard to the act for which he is on trial. If he had, he is responsible, and is neither an idiot nor an insane man By that rule the prisoner has been tried and convicted. And whatever theories learned men may create, there is no other which can be safely introduced into a court of justice.

We trust that the prisoner, during the term of life which remains to him, will receive the care and instruction of good men, to enlighten his darkened mind to a true sense of his condition, and to prepare him for the change that awaits him. For this purpose the sheriff will no doubt admit the visits of all such as are disposed to see him.

The judgment of the law is, that the prisoner at the bar, William Freeman, be taken from this place to the place from whence he came, there to remain until Friday, the eighteenth day of September next, and that on that day, between the hours of one and four in the afternoon, he be taken from thence to the place of execution appointed by law, and there BE HUNG BY THE NECK UNTIL HE SHALL BE DEAD.

Before the above sentence had been executed by the sheriff, the prisoner's counsel obtained an allowance of a Writ of Error, by which the indictment and proceedings were removed to the Supreme Court, for review upon a Bill of Exceptions. The case was argued at a Term of that Court held by Justices Bronson, Beardsley and Jewett, at the city of Rochester, in November, 1846.

The following are the Points made upon the argument of the Bill of Exceptions by the counsel for the prisoner and the people, respectively.

POINTS MADE FOR PLAINTIFF IN ERROR.

I. The proceedings on the trial of the preliminary issue are properly brought before the Court by this Bill of Exceptions. [11 Wend. 561; 15 do. 583; 3 Hill, 432; 1 Root, 551; Minor, 147; 6 Coke, 551; Co. Litt. 289; Graham, 931 to 944.]

II. The prisoner was entitled to peremptory challenges on the trial of the preliminary issue, and therefore the decision of the Court, denying such challenge of Ezra Stone, one of the jury sworn, was erroneous. [3 Ed. R. S. 507; 1 Russ. on C. 13; Bac. Abr. 264; Hale P. C. 267; 2 Hawk. P. C. 411, and authorities cited; Coke Litt. 157; 1 Black. 46; Com. Dig. 323; 2 Strange, 824.]

III. The oath administered to the triors of the challenge of Abraham Gutchess was erroneous and improper. [Bac. Abr. vol. 3; Coke Litt. 158; Trials per Pais, 199; 3 Bl. 362.]

IV. The Court erred in receiving the verdict of the triors in the case of Ezra Stone. [1 Lord Raymond, 133, 324; 5 Bac. Abr. 283, 286; 2 Binney, 514; 5 Burrows, 2669; 1 Salk. 53; 2 Strange, 1083; Trials per Pais, 314; 12 Vesey, 445; 4 Russ. 182.]

V. The Court erred in overruling the following question put by the prisoner's counsel to Simon Hawes, a juror on the preliminary issue, on the challenge for principal cause, viz: "Have you formed and expressed an opinion that the prisoner is guilty of the murders charged against him?" [6 Eng. Com. Law R. 491; Law Rep. 1846; 4 B. and A. 471; 13 State Trials, 221, 334; Trials per Pais, 200; 1 Inst. 158; 2 Hawk. P. C. 589; Burr's Trial, 370; 5 Rand. 659; 2 Tidd, 779; 7 Cranch, 295; 14 Wend. 131; 1 Denio, 282.]

VI. The charge of the Court to the triors on the qualification of Simon Hawes, that a fixed and deliberate opinion that the prisoner was guilty of the crime charged did not disqualify him from sitting as a juror, on the preliminary issue, was erroneous.

VII. The Court erred in refusing to instruct the triors of the qualifications of Henry Acker, that the oath they had taken meant absolute indifference between the parties, and not merely indifference as to the preliminary issue then on trial; and that if they should find the juror not indifferent as to the question of murder, then he was not indifferent as to that issue. [3 Bac. Abr. 259; 7 Cow. 122; 15 John. 177.]

VIII. The Court unlawfully instructed, on Sunday, the jury who had charge of the preliminary issue. [1 R. S. 275; 12 John. 178; 15 do. 119, 277; 20 do. 140; 3 Burrows, 1597; 9 Coke, 66; Cro. Jac. 80, 496; Hale, P. C. 45.]

IX. The Court erred in charging the jury on the preliminary issue. 1st, As to what is evidence of sanity; 2d, As to what constitutes sanity. [Ray, 27; Coll. on Lunacy, 475 to 636; Trial of Abner Rogers, 276; 2 Green. 301; 1 Nott and McCord, 191; 4 Hawk. 292; 19 State Trials, 947.]

X. The verdict on the preliminary issue was bad. 1st, It was not express and certain; 2d, It was argumentative; 3d, It did not cover the whole issue. [2 R. S. 697; 12 Vesey, 445; 7 Paige, 238.]

XI. The Court erred in overruling the plea that John O'Hara, a brother-in-law of Van Nest, was a Grand Juror. [Burr's Trial; 3 Wend. 324.]

XII. The Court erred in overruling the demurrer to the plea to the challenge to the array, on the ground of the discharge of Richard Searing. [1 R. L. 335; Notes of Revisers 3 R. S. 848; 13 Wend. 354; Trials per Pais, 167; 3 Wend. 434; 1 Littell, 202; Burr's Trial, 366, 422.]

XIII. An erroneous decision of the Court overruling a challenge for principal cause, is an error available to the defendant, although the juror was afterwards excluded by a peremptory challenge. [2 Virginia Cases, 297; 1 Denio, 281.]

XIV. The Court erred in disallowing the challenge for principal cause to James Amerman. [7 Cowen R. 121; 4 Wend. 229.]

XV. The Judge erred in his instructions to the triors on the challenge to Argalos Taylor.

XVI. The Court erred in overruling the objection to drawing from the jury box when there were less than twenty-four ballots in the box. [3 Hill, 432; R. S. and Notes.]

XVII. The Court erred in overruling the challenge for principal cause to Benjamin Beach, and in their charge to the triors in the case of Benjamin Beach.

XVIII. The Court erred in overruling the following question, put to the juror, Henry Chadderton, viz: "Have you any opinion upon any subject which would weigh against evidence?"

XIX. The Court erred in overruling the challenge for principal cause to Henry Chadderton.

XX. The Court erred in overruling the challenge for principal cause to Isaac S. Johnson.

XXI. The Court erred in their instructions to the triors on the challenge to Isaac S. Johnson, that an opinion on the prisoner's sanity was not a disqualification.

XXII. The Court erred in disallowing the challenge for prinicipal cause to John Jones, in their instructions to the triors in the case of John Jones, and in refusing to charge in that case as requested by the prisoner's counsel.

XXIII. The Court erred in permitting to be put to James E. Tyler the following question, viz: "When you questioned him in the jail, were his answers pertinent and appropriate?"

XXIV. The Court erred in permitting to be put to the witness, James

E. Tyler, the following question viz: "Have you seen a number of insane men in the prison, and did you have any difficulty in detecting insanity?"

XXV. The Court erred in overruling the following questions to the witness, Ethan A. Warden viz: 1si, "Did you say to yourself, then, 'What has come over Bill?'" 2d, "Did you mention that to your family at the time?" 3d, "Did you then think there was a change in his appearance?" [1 Phil. Ev. Cow. and Hill's Notes, 259, 260.

XXVI. The Court erred in overruling the following questions to Theron Green, a witness for the defendant: 1st, "Why did you not report him? Was it because you thought him irresponsible?" 2d, "Why did you not flog him?"

XXVII. The Court erred in excluding testimony by Doctor Van Epps, Doctor Hun and Doctor McNaughton, of facts showing the prisoner's insanity since the sixth day of July.

POINTS MADE FOR DEFENDANTS IN ERROR.

I. The Preliminary proceeding to test the prisoner's sanity cannot be reviewed on a Bill of Exceptions. [1 Hale, 33-5-6; Trials pr. Pais, 14; O. B. 1783, No. 4; 3 Bac. Abr. 81; Foster, 46; Kel. 13; 1 Lev. 61; 1 Sid. 72; 1 Hawk. P. C. ch. 1 § 4, n. 5.]

II. The several rulings and decisions of the Court in the preliminary trial were correct, and the verdict of the jury is one of sanity, in the very language of the law. [1 Russ. on Cr., p. 8 to 12; the answers of the fifteen judges to questions suggested by the trial of McNaughton—Guy, 331.]

III. No juror was allowed to sit on the trial of the cause to whom prisoner objected, except Beach. The charge in Beach's case is correct, and there is no distinct or specific exception to any part of it.

IV. The testimony of Van Epps, Hun and McNaughton, which was offered and rejected, was irrelevant; at most, it was discretionary with the Court to receive it. That discretion was wisely exercised, and is not subject to exception. Testimony of a more dangerous character cannot well be imagined, and the reception of it would render a defence interminable. [Rex. vs. Lord Ferrers, 19 St. Trials (Howell) 947; Collison, 477; do. 673; do. 636; do. 480; Arch. Cr. Pl. 14; Dickinson vs. Barber, 9 Mass. 225; Guy, 332.]

WILLIAM H. SEWARD and DAVID WRIGHT for prisoner.

JOHN VAN BUREN and LUMAN SHERWOOD for the people.

The arguments of counsel before the Supreme Court cannot be reported. The questions discussed and decided are fully indicated in the points herein

before stated, and in the opinion of that tribunal delivered on granting the motion for a new trial.

OPINION OF SUPREME COURT—Beardsley, J.

The prisoner was tried at a Court of Oyer and Terminer, held for the county of Cayuga, and found guilty of the crime of murder; and upon which verdict sentence of death was pronounced. In the course of the trials, preliminary and final, a multitude of exceptions were taken by the prisoner's counsel, which, with the record of the conviction and sentence, have been brought into this Court by writ of error. These exceptions, or such of them as the counsel for the prisoner supposed to be available, were argued at the last term of this Court, and having since been examined and considered, with care and deliberation, I am now prepared to dispose of them, by rendering judgment on the case before us.

When the prisoner was brought before the court of Oyer and Terminer, to be arraigned on the indictment, a plea that he was then insane was interposed by counsel on his behalf, which being denied by the public prosecutor, a jury was empannelled, to try the issue so joined. On the trial of this issue, various objections were made and exceptions taken, by the prisoner's counsel; and the first question to be decided is, whether these exceptions can be re-examined on a writ of error. The statute declares that "no insane person can be tried, sentenced to any punishment, or punished for any crime or offence, while he continues in that state." [2 R. S. 697. § 2.] This, although new, as a Legislative enactment in this State, [3 Id. 832.] was not introductory of a new rule, for it is in strict conformity with the common law on this subject. "If a man," says Sir Wm. Blackstone, "in his sound memory, commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it,—because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried: for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non-sane memory, execution shall be stayed: for peradventure, says the humanity of the English law, had the prisoner been of sound mind, he might have alleged something in stay of judgment or execution. Indeed," it is added, "in the bloody reign of Henry the Eighth, a statute was made, which enacted that if a person, being *compos mentis*, should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death, as if he were of perfect memory. But this savage and inhuman law was repealed by the statute of 1 and 2 Ph. and M., C. 10. For as is observed by Sir Edward Coke, 'the execution of

an offender is for example, *ut pœna ad paucos, metus ad omnes perveniat.*' But so it is not, when a madman is executed; but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others." [4 Bl. Comm. 24.] The true reason why an insane person should not be tried is, that he is disabled by an act of God to make a just defence, if he have one. As is said in 4 Harg. State Trials, 205. "There may be circumstances lying in his private knowledge which would prove his innocency, of which he can take no advantage, because not known to the persons who shall take upon them his defence." The most distinguished writers on criminal jurisprudence concur in these humane views; and all agree, that no person in a state of insanity should ever be put upon his trial for an alleged crime, or be made to suffer the judgment of the law. A madman cannot make a rational defence; and as to punishment, *furiosus solo furore punitur.* [Hale P. C. 34, 35; 4 Bl. Comm. 395–6; 1 Ch. C. L. Ed. 1841, p. 761; 1 Russ. on Crimes, Ed. 1845, p. 14; Shelf. on Lunacy, 467–8: Stock. on *Non Com.* 35–6.]

The statute is explicit, that "no insane person can be tried;" but it does not state in what manner the fact of insanity shall be ascertained. That is left as at common law; and although in the discretion of the court, other modes than that of a trial by jury may be resorted to, still, in important cases, that is regarded as the most discreet and proper course to be adopted. [See the authorities last referred to; also, 1 Hawk P. C., by Carwood, page 3 and note: Steph. C. L. 3, 4, 280, 334.]

At Common Law the only regular mode of redress for errors occurring on criminal trials, was by motion for a new trial in the court where the trial was had, unless the error was in some matter which formed a part of the record, when it might be reviewed after judgment by writ of error. Bills of exceptions, by which questions of law, made and decided on such trials, may be brought up and reviewed in higher courts, were unknown to the Common Law, although now allowed by a statute of this State. But the statute is limited to exceptions taken on the trial of the main issue, and does not reach such as are made on the trial of a preliminary or collateral question. The words are, "on the trial of any indictment, exceptions to any decision of the court may be made by the defendant in the same cases and manner provided by law in civil cases." [2 R. S. 736, §21: see also 3 Id., 849.] A trial of the question of present insanity is not a *trial of the indictment*, but is preliminary to such trial. The object in a case situated as this was, is simply to determine whether the person charged with an offence and alleged to be insane, shall be required to plead and proceed to the trial of the main issue of guilty or not guilty. The statute does not authorise exceptions to be taken on such preliminary trial; and if errors occur, they must be corrected, if at all, as at Common Law, by the court which committed them. For this reason none of the exceptions taken by the prisoner's counsel, on the trial of the preliminary issue in this case, can be regarded

as regularly before us; nor could they, if held to be well taken, constitute a ground for reversing the judgment of the court below. This part of the case might here be dismissed; but I choose not to do so, lest an implication should arise that, in the opinion of this court, the preliminary trial was conducted throughout with regularity, and according to law.

On the preliminary trial the counsel for the prisoner claimed the right to challenge jurors peremptorily, as it is conceded to exist on the trial of the main issue. This the court refused to allow—and it seems to me correctly. Peremptory challenges are allowed *in favorem vitæ*, and at Common Law are restricted to the main issue, in which the life of the party is in jeopardy, and cannot be made on the trial of any collateral issues whatever. [2 Hale, P. C. 267, chap. 35; Bac. Abr. Juries, E. 9; Foster, C. L., 42; 4 Bl. Com. 353, 396; Co. Litt. 156 b.; The King v. Radcliffe, 1 W. Bl. Rep. 3-6.] To the like effect is the statute which secures to "every person arraigned and put on his trial for any offence punishable with death, or with imprisonment in a State Prison ten years or any longer time," the right "peremptorily to challenge twenty of the persons drawn as jurors for such trial." [2 R. S. 734, §9.] This preliminary trial was not a "trial for any offence" whatever—and there was no error in refusing to allow peremptory challenges to be made. Challenges for cause are allowable on the trial of preliminary as well as final issues. This was conceded; and several of this description were interposed on behalf of the prisoner. I pass by these without particular examination, as this class of challenges will again be presented for consideration before the case is closed, when such suggestions will be made as are deemed pertinent to this as well as other parts of this case.

An objection was made to the oath as administered to some of the triors of challenges to jurors drawn for this preliminary trial. The oath was thus: "You do solemnly swear that you will well and truly try, and well and truly find whether the juror is indifferent between the people of the State of New York, and the prisoner at the bar, upon the issue joined." This form of oath was not administered in every instance, the qualification at its close made by the words "upon the issue joined" being sometimes omitted, as it should have been throughout. The oath, as given in books of approved credit and authority, contains no such limitation—but requires the triors to find whether the juror is or is not indifferent between the parties to the controversy. [Tr. pr. Pais, 205; 1 Ch. C. L. 549; Bac. Abr. Juries E. 12, *note;* 1 Cow. 441, *note;* 1 Salk. 152.] And jurors should be so. It is not enough that they are indifferent upon the particular issue to be tried. An actual and thorough impartiality in regard to the parties is required, for no one who labors under prejudice, malice or ill-will towards another, can be in a fit frame of mind to act impartially where his rights are in question. In Brittain v. Allen [2 Dev. 120] the defendant challenged a juror for cause, to wit: hostility between the juror and party challenging. The challenge was overruled, and the juror was sworn. On a motion for a new trial, Hen-

derson, Ch. J. said: "It seems that the judge disregarded all kinds of hostility but that which related to the *particular suit then to be tried.* I think that the law is otherwise. The juror should be perfectly impartial and indifferent. Causes apparently very slight are good causes of challenge; and that which is good cause for quashing the array, is good cause of challenge to the polls. I mention this, as most, at least many, of the cases are challenges to the array. If the sheriff be liable to the distress of either party, or if he be his servant or counsellor, or if he has been god-father to a child of either of the parties or either of them to his, or if an action which implies malice, as assault and battery, slander, or the like, is depending between them—these all are causes of principal challenges. [Bac. Abr. Juries F. 1.] From these cases, particularly the one which states a suit pending which implies malice, it appears that general hostility—by which I mean that which is not confined to the particular suit—is ground of challenge. From these causes the law of itself implies a want of indifference, which the defendant offered to show. I think he ought to have been permitted to do so, and if he succeeded, that the juror should not have been sworn. For this cause, and for this only, there should be a new trial." So in the case at bar, the oath only required the triors to find indifference between the parties, "upon the issue" then to be decided. In other respects, if the clause is susceptible of any meaning, the juror, although a sworn enemy of the prisoner, might still be found by the triors to be a competent and proper person to pass upon the question then to be decided. This would be intolerable; and an oath which requires or will admit of such a construction, cannot be correct. There is no precedent for one in this form, as will be seen from looking at the authorities already referred to. At the very best, the clause objected to is unmeaning, or ambiguous. But an oath should be plain, explicit, and free from all ambiguity. If this clause does not necessarily affix an improper limitation to the obligation which the law seeks to cast upon the trior by the oath administered to him, it is very liable so to be construed and understood as to have that effect.

In charging the jury on the preliminary issue, which we have seen was on the fact of present insanity, the court said: "The main question with the jury was to decide whether the prisoner knew right from wrong. If he did, then he was to be considered sane." The statute before cited is emphatic, that "no insane person can be tried." In its terms the prohibition is broad enough to reach every possible state of insanity, so that if the words are to be taken literally, no person, while laboring under insanity in any form, however partial and limited it may be, can be put upon his trial. But this the Legislature could not have intended, for, although a person totally bereft of reason cannot be a fit subject for trial or punishment, it by no means follows that one whose insanity is limited to some particular object or conceit, his mind in other respects being free from disease, can justly claim the like exemption. This clause of the statute should receive a reasonable in-

terpretation, avoiding on the one hand what would tend to give impunity to crime, and on the other seeking to attain the humane object of the Legislature in its enactment. The Common Law, equally with this statute, forbids the trial of any person in a state of insanity. This is clearly shown by authorities which have been referred to, and which also show the reason for the rule, to wit: the incapacity of one who is insane to make a rational defence. The statute is in affirmance of this Common Law principle, and the reason on which the rule rests, furnishes a key to the intention of the Legislature. If, therefore, a person arraigned for a crime, is capable of understanding the nature and object of the proceedings going on against him—if he rightly comprehends his own condition in reference to such proceedings, and can conduct his defence in a rational manner—he is, for the purpose of being tried, to be deemed sane, although on some other subjects his mind may be deranged, or unsound. This is, as it seems to me, the true meaning of the statute, and such is the construction put, by the English courts, on a similar clause in an act of Parliament. By the 39 and 40 Geo. 3, ch. 94, sec. 2, it is enacted that "if any person indicted for any offence, shall be insane, and shall upon arraignment be found so to be by a jury lawfully empannelled for that purpose, so that such person cannot be tried upon such indictment"—"it shall be lawful for the court before whom any such person shall be brought to be arraigned"—"to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody till his Majesty's pleasure shall be known." [1 Russ. on Cr. 15.] The question upon this statute is the same as upon ours; that is—Is the alleged offender insane? Russel says, (p. 15): "If a prisoner have not at the time of his trial, from the defect of his faculties, sufficient intelligence to understand the nature of the proceedings against him, the jury ought to find that he is not sane—and upon such finding he may be ordered to be kept in custody, under this act." For this he refers to the case of Rex v. Dyson, (7 C. and P. 305—same case 1 Lewin C. C. 64,) before, Mr. Justice J. Parke, in 1831. In that case the prisoner was indicted for murder, and on being arraigned, stood mute. A jury was then empannelled to try whether she did so by malice or by the visitation of God—and they found she did so by the visitation of God. The judges thereupon examined on oath a witness who was acquainted with the prisoner, and who swore that she could be made to understand some things by signs, and could give her answers by signs. The witness was then sworn to interpret and make known to the prisoner the indictment and charge against her; and to the court, her plea and answer thereto. The witness explained to her by signs what she was charged with, and she made signs which imported a denial of the charge: whereupon the judge directed a plea of not guilty to be recorded. The witness, by direction of the court, then stated to her that she was to be tried by a jury, and that she might object to such as she pleased. But he testified that it was impossible to make her comprehend a matter of that nature, although she might understand sub-

jects of daily occurrence which she had been in the habit of seeing. A jury was thereupon "empanelled and sworn to try whether she was sane or not" —and proof was given of "her incapacity at that time to understand the mode of her trial, or to conduct her defence." The judge "told the jury that if the prisoner had not then, from the defect of her faculties, intelligence enough to understand the nature of the proceedings against her, they ought to find her not sane." The jury so found—and the prisoner was detained in close custody as the statute directs. A similar case occurred in 1836, which was disposed of in the same way. Alderson, B. said to the jury—"the question is, whether the prisoner has sufficient understanding to comprehend the nature of this trial, so as to make a proper defence to the charge." [Rex v. Pritchard, 7 C. and P. 303.] Both these prisoners had been at all times deaf and dumb. In presumption of law such persons are always idiots or madmen, although it may be shown that they have the use of understanding, and are capable of committing crimes, for which, in that event, they should to be punished. [Russ. on C. 6; Shelf. on Lunacy 3.]

In the case of Queen v Goode, [7 A. & E. 536,] which occurred in 1837, the prisoner was brought into the court of Queen's Bench, and arraigned on an indictment for a misdemeanor. As he showed clear symptoms of insanity, a jury was immediately empanelled to try whether he was then insane or not; and upon evidence given, as well as upon his appearance in court, the jury found that he was insane. The prisoner was thereupon detained in custody under the statute.

In Ley's case, [1 Lewin, C. C. 239,] on the trial of a similar question, Hullock, B. said to the jury: "If there be a doubt as to the prisoner's sanity —and the surgeon says it is doubtful—you cannot say that he is in a fit state to be put upon his trial."

The course of Common Law was much the same. In Firth's case, [22 How. State Tr. 307—318,] which preceded the act of 1839 and 1840, Geo. 3, to which reference has been made, the prisoner was arraigned for high treason, and a jury sworn to inquire whether he was of sound mind and understanding or not. Lord Kenyon, Chief Justice of the King's Bench, presided at the trial, assisted by one of the barons of the Court of Exchequer, and one of the judges of the Court of Common Pleas. It was observed by the court to the jury, that the inquiry was not whether the prisoner was insane when the alleged crime was committed, nor was it necessary to inquire at all what effect his present state of mind might have, when that question came to be discussed. But the humanity of the law of England had prescribed that no man should be called upon to make his defence at a time when his mind was in such a situation that he appeared incapable of doing so; that however guilty he might be, the trial must be postponed to a time when, by collecting together his intellects, and having them entire, he should be able so to model his defence, if he had one, as to ward off the punishment

of the law; and it was for the jury to determine whether the prisoner was then in that state of mind. [Shelf. 468.]

With these lights before us, the construction of the statute which forbids the trial of any insane person, cannot be attended with much difficulty. A state of general insanity, the mental powers being wholly perverted or obliterated, would necessarily preclude the trial, for a being in that deplorable condition can make no defence whatever. Not so, however, where disease is partial, and confined to some subject other than the imputed crime and contemplated trial. A person in this condition may be fully competent to understand his situation in respect to the alleged offence, and to conduct his defence with discretion and reason. Of this the jury must judge; and they should be instructed that if such should be found to be the case, it will be their duty to pronounce him sane. In the case at bar, the court professed to furnish a single criterion of sanity, that is, a capacity to distinguish between right and wrong. This, as a test of insanity, is by no means invariably correct; for while a person has a very just perception of the moral qualities of both actions, he may at the same time, as to some one in particular, be absolutely insane, and consequently, as to this, be incapable of judging accurately between right and wrong. If the delusion extends to the alleged crime or the contemplated trial, the party manifestly is not in a fit condition to make his defence, however sound his mind may, in other respects, be. Still, the insanity of such a person being only partial, not general, a jury under a charge like that given in this case, might find the prisoner sane; for in most respects he would be capable of distinguishing between right and wrong. Had the instructions been that the prisoner was to be deemed sane, if he had a knowledge of right and wrong in respect to the crime with which he stood charged, there would have been but little fear that the jury could be misled; for a person who justly apprehends the nature of a charge made against him, can hardly be supposed incapable of defending himself in regard to it, in a rational way. At the same time, it would be well to impress distinctly on the minds of jurors, that they are to guage the mental capacity of the prisoner in order to determine whether he is so far sane as to be competent in mind to make his defence, if he have one; for unless his faculties are equal to that task, he is not in a fit condition to be put on his trial. For the purpose of such a question the law regards a person thus disabled by disease as *non compos mentis*, and he should be pronounced unhesitatingly to be insane, within the true intent and meaning of this statute. Where insanity is interposed as a defence to an indictment for an alleged crime, the inquiry is always brought down to the single question of capacity to distinguish between right and wrong at the time when the act was done. In such cases the jury should be instructed that "it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and qua-

lity of the act he was doing—or if he did know it, that he did not know he was doing wrong," The mode of putting the latter part of the question to the jury on these occasions, has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not deemed so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged." (2 Greenl. Ev. § 373.) This is the rule laid down by all the English Judges but one, in the late case of McNaughton, while pending in the House of Lords. The case is reported in 10 Clark & Fin. 200, and the opinion of the judges may be found in a note to the section of Green. Ev. referred to. In Rex v. Oxford, (9 C. & P. 525,) Lord Denman, Ch. J. charged the jury in this manner: "The question is, whether the prisoner was laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing, or in other words, whether he was under the influence of a diseased mind, and was really unconscious, at the time he was committing the act, that it was a crime." The insanity must be such as to deprive the party charged with crime, of the use of reason in regard to the act done. He may be deranged on other subjects, but if capable of distinguishing between right and wrong in the particular act done by him, he is justly liable to be punished as a criminal.

Such is the undoubted rule of the Common Law on this subject. Partial insanity is not necessarily an excuse for crime; and can only be so where it deprives the person of his reason in regard to the act charged to be criminal. Nor in my judgment was the statute on this subject intended to abrogate or qualify the Common Law rule. The words of the statute are, "No act done by a person in a state of insanity can be punished as an offence." (2 R. S. 697 § 2.) The clause is very comprehensive in its terms, and at first blush might seem to exempt from punishment every act done by a person who is insane *upon any subject whatever*. This would, indeed, be a mighty change in the law, as it would afford absolute impunity to every person in an insane state, although his disease might be confined to a single and isolated subject. If this is the meaning of the statute, jurors are no longer to inquire whether the party was insane "in respect to the very act with which he is charged," but whether he was insane in regard to any act or subject whatever; and if they find such to have been his condition, render a verdict of not guilty. But the statute is not so understood by me. I interpret it as I should have done if the words had been "no act done by a person in a state of insanity," *in respect to such act*, "can be punished as an offence." The act, in my judgment, must be an *insane act*, and not merely the act of an *insane person*. This was plainly the rule of law before the statute was passed; and although that took place more than sixteen years since, I am not aware that it has at any time been held or intimated by any

judicial tribunal, that the statute had abrogated, or in any respect modified, this principle of the Common Law.

But to return to the trial of the preliminary question in the present case. The jury found, not as the issue required them to do, that the prisoner was or was not insane—but that he was "*sufficiently* sane, in mind and memory, to distinguish between right and wrong." This verdict was defective. It did not directly find any thing, and certainly not the point in issue; but evaded it by an argumentative finding. At the utmost, the jury only made an approach towards the point to be decided, but failed to reach it. They should have been required to pass directly on the question of insanity, and should not have been allowed to evade it by an argumentative verdict of any sort. Such a finding as this would be objectionable in a civil proceeding, and in a criminal case should not be allowed. [In the matter of Morgan, a lunatic, 7 Paige, 236.]

The preliminary trial being closed, a plea of not guilty was entered for the prisoner; and the court proceeded to the trial of the main issue. Numerous objections were taken in the course of the trial by the counsel for the prisoner, most of which were obviously not well founded, and were properly overruled by the court. I shall notice but four of the points excepted to, as it is deemed unnecessary to give to each of them a separate examination.

Several persons, drawn as jurors, were in the first place challenged for principal cause, by the counsel for the prisoner; but the court held that these challenges were not sustained by the evidence adduced in their support. Challenges to the favor were then interposed; but the jurors were found by the triors to be indifferent. Various exceptions were taken by the prisoner's counsel to points made and decided in disposing of these challenges; and although the several jurors thus challenged were ultimately excluded by the peremptory challenge of the prisoner, it is now urged that these exceptions are still open to examination and review in this court. I think otherwise. The prisoner had the power and the right to use his peremptory challenges as he pleased; and the court cannot judicially know for what cause or with what design he resorted to them. [The People vs. Bodine, 1 Denio, 310.]

He was free to use or not use them, as he thought proper; but having resorted to them, they must be followed out to all their legitimate consequences. Had he omitted to make peremptory challenges, his exceptions growing out of the various challenges for cause would have been regularly here for revision. But he chose, by his own voluntary act, to exclude these jurors; and thus virtually, and, as I think, effectually, blotted out all such errors, if any, as had previously occurred in regard to them. But the case of the juror Beach stands on other grounds. He was first challenged, as is said, for principal cause; which, after evidence had been given, was overruled by the court. He was then challenged to the favor; but the triors found him

to be indifferent. No peremptory challenge was made, and he served as one of the jury. As to this juror, every exception taken by the prisoner's counsel is now here for examination and revision.

When a juror is challenged for principal cause or to the favor, the ground of the challenge should be distinctly stated; for without this the challenge is incomplete, and may be wholly disregarded by the court. It is not enough to say, I challenge for principal cause, or to the favor, and stop there. The cause of the challenge must be specified. In Mann vs. Glover. (2 Green. R. 195,) the Court say: "A party cannot make a principal challenge or a challenge to the favor by giving it a name. A challenge, whether in writing or by parol, must be in such terms that the court can see in the first place whether it is for principal cause or to the favor, and so determine by what form it is to be tried; and secondly, whether the facts, if true, are sufficient to support such challenge." Again, the challenger must "state why the juror does not stand indifferent. He must state some facts or circumstances which, if true, will show either that the juror is positively and legally disqualified, or create a suspicion that he is not or may not be impartial. In the former case the challenge would be a principal one, triable by the court—in the latter it would be to the favor, and submitted to triors."

These views are sound and appropriate, and their observance would greatly promote order and convenience in the determination of challenges. I am aware that challenges are not unfrequently made in general terms, which merely indicate the supposed character of the challenge, as for principal cause or to the favor, but without designating the particular grounds by which, if at all, it must be sustained. In this posture of the question, as far as a question can be said to have been made, the parties proceed to the examination of witnesses before the court, or triors, as the case may be. No issue has been joined, and no matter of fact alleged by either party. What is to be tried? It can hardly be determined in such a state of things, whether the question is one of fact or of law, and the proceeding is obviously inconvenient and irregular. Challenges for principal cause may become part and parcel of the record, and should, therefore, be made in due form. They may be demurred to, and unless some cause, sufficient of itself to raise the legal presumption of unindifference, is alleged, the challenge must, of course, be overruled. But the opposite party is not bound to demur. He may take issue on the facts stated as ground for the challenge, or may counterplead new matter in evidence. Thus an issue of fact may be joined, which must be decided on the evidence to be adduced by the respective parties. By pursuing the orderly mode of requiring the challenger to specify the grounds of his challenge, and the opposite party to demur, take issue, or counterplead, questions of law and fact will be kept distinct; and, as I apprehend, the convenience of the parties, as well as that of the court, will be greatly promoted. The case of Mann vs. Glover has not been referred to as containing any new doctrine, but because it presents a terse summary of the

law on this subject. All challenges, except such as may be made peremptorily, are *for cause;* and unless some cause is stated by the challenger, the objection cannot justly be called a challenge, nor should it be regarded as such.

The bill of exceptions does not show in terms what cause of challenge was alleged against the juror Beach. It is only said he was challenged "for principal cause." But from the scope and character of the evidence given to maintain the challenge, the inference is plain that it was alleged the juror had formed and expressed an opinion that the prisoner was guilty of the crime for which he stood indicted. This was good cause of principal challenge, as has repeatedly been held by this Court. [Exparte Vermilyea, 6 Cow. 555; 7 Id. 108; The People vs. Mather, 4 Wend. 229; see also Mann vs. Glover, *supra;* The State vs. Benton, 2 Dev. & B. 196; Irvine v. Kean, 14 S. & R. 292; The Commonwealth v. Lesher, 17 Id. 155.] We must then understand this cause of challenge to have been alleged; and as evidence was gone into, the fact must have been expressly or virtually denied by the public prosecutor. An issue was thus joined to be tried by the court; and if the fact alleged was found to be true, the juror was necessarily excluded. Every challenge for principal cause, must be for some matter which imports absolute bias or favor, and leaves nothing for the discretion of the court. The truth of the fact alleged, and that alone, is in question. Its sufficiency as ground of challenge is conceded by omitting to demur and taking issue on the fact. It is otherwise on a challenge to the favor. That must be determined by triors, who are to pass upon the question of actual bias or favor. They are final judges upon the matter submitted to them, and from their decision, when properly instructed, the law has provided no appeal.

The challenge of the juror Beach, for principal cause, was not, in my opinion, sustained by the evidence, and was correctly overruled. He had only an impression that the prisoner was guilty, but nothing which deserved to be called an absolute opinion. He had doubts of the prisoner's guilt, and as far as any opinion had been formed, it was contingent and hypothetical. Such impressions or opinions fall short of what is required to maintain a challenge for principal cause. [The People v. Bodine, 1 Denio, 281–306; The People vs. Mather, 4 Wend. 243 and cases there cited; Mann v. Glover, *supra;* Irvine v. Lumberman's Bank, 2 W. & S. 190, 202.]

The challenge for principal cause having been overruled, or in other words found not to be sustained by the evidence given in its support, this juror was challenged to the favor; and the question of his indifference was submitted to triors on the same evidence which had been given to the court, on the trial of the challenge for principal cause. As the bill of exceptions states, the court charged the triors the same as in the case of the juror Taylor, to which charge, and every part and portion thereof, the counsel for the prisoner excepted.

In the case of the juror Taylor, evidence was given tending to show that

he had decided impressions against the prisoner, and a pretty strong belief of his guilt; and in the case of Beach the evidence, although less decisive, was of the same character. The court charged the triors in the case of the juror Taylor, among other things, that the resort to the triors by the prisoner's counsel was in the nature of an appeal from the opinion of the court on the facts, and that a hypothetical opinion formed by the juror did not disqualify him. These points were distinctly stated in the charge, and as it seems to me are plainly reached by the exception as taken. The charge embraced several distinct propositions, amongst which were those I have stated; and although a separate and formal exception was not pointed at each of these positions as laid down by the court, the exception as taken, was in my opinion fully sufficient to apprise the court and the counsel of what was intended. In terms, the exception extended to "every part" and "portion" of the charge, which would seem to be sufficient to reach every distinct position of law which had been laid down by the court. At all events, in a capital case, where it is obvious that the court regarded the exception as stated fully sufficient for the occasion, I do not feel at liberty to overlook it as deficient in the requisite degree of certainty.

Then, as to the legal positions laid down by the court, and which have been already stated, it seems to me they cannot be maintained. I would not be understood to hold that a hypothetical opinion necessarily disqualifies a juror. It clearly does not. If such were its effect, it would uphold a challenge for principal cause, which it will not. Still, it is some evidence of bias, and upon which triors in their discretion may set a juror aside. [The People v. Bodine, *supra*.] The court should not instruct them as matter of law, as was done in this case, that such an opinion does not disqualify a juror, for this, in effect, is charging them that he cannot be set aside on that ground. If the triors find that bias actually exists in the mind of the juror, although it is proved only by the formation of a hypothetical opinion, they may and ought to reject him. Some minds are so constituted that such an opinion would exert a controlling influence in the jury box, while with others, its influence would be neither seen nor felt. All this is to be considered and passed upon by the triors. No rule can be laid down which will enable them in every case to determine with unerring certainty that the juror is or is not indifferent between the parties. It is not a question to be solved by a rule of law, but by the common sense of the triors, and if this has fair play, the difficulty will rarely be found very great. The triors must find that the juror stands impartial and indifferent, or they should reject him. It is the province of the court to say what evidence is admissible on the question of indifference; but its strength and influence in establishing the allegation of bias or favor, are for the triors alone to determine. The court erred in instructing these triors that the juror could not be found unindifferent on evidence that he had formed a hypothetical opinion of the guilt of the prisoner. The instruction should have been that this was evidence to be con-

sidered by the triors, and if it convinced them that actual bias existed, the juror ought to be excluded; but if his mind was, notwithstanding, found to be impartial and unbiassed, the objection should be disregarded.

I know of no sense in which a resort to triors by a challenge to the favor can be rightly regarded as an appeal from the decision of the court, on a challenge for principal cause. The latter species of challenge is allowed on some ground from which the law infers partiality or bias; and where the fact is put in issue, the court has only to find whether it is true or not. If true, the law adjudges unindifference—and the juror is necessarily excluded. The court is not to pass upon the question of actual bias, but simply to ascertain the truth of the alleged cause of challenge; for if that is true, it follows that the juror is unindifferent. But on a challenge for favor, no such isolated question is presented to the triors. They are first to inquire whether the alleged cause or ground of challenge is true in fact. But this is not all; for supposing its truth to be established, they must then pass upon the effect it has produced upon the mind of the juror, and find whether the consequence has been actual bias or favor. The triors must come to this conclusion before they can exclude a juror on a challenge to the favor. But as no such question is to be decided by the court, on a challenge for principal cause, the charge in this case, that the resort to the triors was an appeal from the decision of the court, was erroneous. Besides, the tendency of such a charge must be to prejudice the prisoner on the question to be decided by the triors; for it virtually places them in the position of persons sitting in judgment on what had immediately before been determined by the court. It should never be lost sight of, that the triors are to ascertain the real state of mind of the juror to determine whether he is truly impartial and indifferent between the parties, without favor or bias as to either, and that all the evidence given is only allowable as material to enable the triors to come to this result. On this part of the case my opinion is, that there was error in the instructions to the triors, and for which the judgment should be reversed and a new trial ordered.

I proceed to another class of questions made by the prisoner's counsel.

The verdict on the preliminary issue was rendered on the sixth of July. In the course of the trial, and shortly after the fifteenth of that month, several medical witnesses were sworn and examined on the part of the prisoner, with a view to establish his insanity the preceding March, when the alleged murder was perpetrated. One of these witnesses, Dr. Van Epps, had known the prisoner from childhood, and had visited and examined him with a view to ascertain his mental condition, both before and after the sixth of July. The others had never seen the prisoner until the fifteenth of July, but they also had examined him on and after that day, in order to be prepared to express an opinion on the question of his sanity or insanity.

That part of the bill of exceptions which states the questions made and exceptions taken in regard to these witnesses, is perhaps liable to some mis-

apprehension; and it may be that I have not rightly understood what was intended to be decided by the court. I have read this part of the bill of exceptions repeatedly, with an anxious desire to collect its true meaning; and although I would not affirm positively that its meaning may not have been misapprehended, I still think no error has been fallen into in regard to the views of the court. As I understand the bill of exceptions, the court held that it was competent for these or other medical witnesses to express an opinion upon the question of the insanity of the prisoner at the time of the alleged murder; but that such opinion must be formed upon facts and circumstances which occurred, or observations made, before the sixth of July, when the verdict on the preliminary issue was rendered, and could in no degree rest upon any thing observed in the appearance, manner or condition of the prisoner since that time; that the witnesses could not, with a view to fortify the conclusion of insanity at the time of the homicide, be allowed to express an opinion that he was insane at the trial, or had been at any time since the sixth of July; nor was it even allowable to say they had examined the prisoner since that time with a view to ascertain his mental condition. These restrictions were deemed proper by the court, as I gather from the bill of exceptions, on the ground that the verdict on the preliminary issue had conclusively established, for all purposes connected with this trial, the sanity of the prisoner at the time when that verdict was rendered. I cannot adopt the suggestion made on the argument, that the sixth of July may have been taken as a reasonable time by which to bound the inquiries made of these witnesses. On the contrary, it is quite clear that the court regarded the preliminary verdict as decisive of the question of present insanity, and therefore limited the witnesses to the time when that verdict was rendered. In giving reasons for his opinion that the prisoner was insane, Doctor Van Epps spoke of an interview with him since the sixth of July, when he "was stopped by the court, who then remarked (an objection having been made by the counsel for the People) that the question of present sanity had been tried and verdict rendered on the sixth of July instant, and that the question of the present sanity could not be then again re-tried;" that the question now was as to the sanity of the prisoner when the deed was done, the preceding March, "and that the evidence of insanity must be confined to facts before and at the time of committing the act, and up to the sixth of July instant, when the verdict of sanity was rendered."

Doctor Hun, another of these witnesses, had first seen the prisoner on the 15th day of July. The prisoner's counsel "proposed to prove by this witness, that in his opinion the prisoner is and was insane at the time of the commission of the crime. This was objected to by the counsel for the people, on the ground that the verdict on the preliminary issue, rendered on the sixth day of July instant, was and is conclusive that the prisoner was sane on that day, and that the same cannot be contradicted by evidence." The court did not pass directly upon this offer and objection, although the ground

stated by the counsel for the people is understood to have been precisely that which the court acted upon. This witness was asked if he had made a personal examination of the prisoner since his arrival at the court, which was on the 15th day of July, "with reference to the state of his mind." To this the counsel for the people objected, and the court refused to allow the witness to give an answer. He was then asked if it was his opinion, founded upon personal examination since the sixth day of July, that the prisoner was insane on the twelfth of March, when the homicide was perpetrated. This was objected to by the counsel for the people, and the court sustained the objection. The witness was then asked his opinion, founded on such examination, as to the prisoner's being insane at the time when the question was put. This was also objected to and excluded by the court. Dr. McNaughton was examined under like restrictions. "The court decided that the witness should not testify as to any examination made by him of the prisoner since the sixth day of July instant," and particularly "instructed the witness that he should, in any future testimony to be given by him, upon the trial of this cause, exclude all knowledge or information gained by him of or about the prisoner, since the sixth day of July instant." These references to points decided and views expressed by the court, clearly show, in my opinion, that the court regarded the preliminary verdict as absolutely conclusive, for all purposes in this case, that the prisoner, on and after the sixth of July, was in a sane state.

The views of the court upon this part of the case were, in my opinion, clearly erroneous. In strictness, the verdict on the preliminary issue was not before the court and jury on the trial of the issue of guilty or not guilty —nor was it in any respect material to such trial. But if it should be regarded as a fact in the case, of which the court and jury, while engaged in the trial of the main issue, might take notice, no such consequence as that deduced by the court would follow from it. The only object of the preliminary trial was to ascertain the mental condition of the prisoner, in order to determine whether he should be tried on the indictment. This, I repeat, was the only object of that trial; and the result at which the first jury arrived could have no possible bearing or just influence upon the trial of the main issue. The indictment was not to be tried piece-meal, but at one time and by a single jury. If, therefore, the opinion sought to be obtained from these medical witnesses was otherwise competent and proper, (and that seems to have been conceded,) it is perfectly clear that the preliminary verdict constituted no obstacle to its reception.

I am not about to inquire how far or under what circumstances medical witnesses may be admissible on the question of insanity, although in general nothing is better settled than that such evidence is competent. [1 Phil. Ev. 290; Shelf. on Lu. 62, 67, 73; 1 Greenlf. Ev. § 440.] And I entertain no doubt that such a witness should be allowed to express an opinion in regard to the mental condition of a person alleged to be insane, in the month of

March, although the opinion may have been founded solely on an examination made in the succeeding July. In most cases, undoubtedly, the opinion would be more satisfactory and convincing when based on observations made at or about the time to which the inquiry relates. But it was not decisive against the reception of such evidence, though founded on examinations made at a later period. The competency of the testimony is one question, and its effect another. The first is for the court, and the latter for the jury. It will sometimes undoubtedly be found, and perhaps not unfrequently, that the mental malady is such that an examination would disclose, beyond all peradventure, to a skillful physician, what must have been the condition of the patient for months or years before. The lateness of the time when the examination was made, as well as the character of the malady, are certainly to be considered in determining the degree of consequence which should be given to the opinion of the witness, but unless the intervening time is much greater than from March to July, that can furnish no solid objection to the admission of the evidence. If I could, therefore, adopt the suggestion that the sixth of July was adopted by the court as a reasonable limitation to inquiries of this description, I should still be unable to agree that the court had a right to impose any such restriction upon the witnesses. It was competent for such witnesses to state what their opinions were, whether founded on examinations before or during the trial; and those opinions might not only extend to the mental condition of the prisoner, at the time when the homicide was perpetrated, but they might be brought down to the very time when the witness was speaking. The latter would be admissible, not because the present insanity of the prisoner would necessarily control the verdict, but because it tended to fortify the conclusion that insanity existed in the preceding March. But although such are my views upon this part of the case, it is not supposed that the court excluded the evidence of the opinion of these witnesses, in consequence of the lateness of the period when their examination had been made. The evidence was shut out, as I understand the case, because the verdict on the preliminary issue was supposed to constitute an insuperable bar to its reception. This, as I before said, was, in my judgment, erroneous. Upon the whole case, therefore, I think the judgment of the court should be reversed, and a new trial ordered.

Whether the prisoner was or was not insane at the time of the homicide, or the trial, is not a question before us on this bill of exceptions, and no opinion on that subject is intended to be expressed or intimated.

Judgment Reversed.

During the foregoing proceedings in the Supreme Court, the prisoner remained in chains in the jail of Cayuga County. After the Court had granted him a new trial, he was visited by the Circuit Judge, and examined with reference to his mental condition, and the propriety of a second trial

before *his* Court. He found the prisoner in a gradual decline of health and strength, and as unconcerned about his fate as when upon trial for his life. It is understood that his Honor declined to try the prisoner again. He was never re-tried.

WILLIAM FREEMAN DIED IN HIS CELL, AUGUST 21st, 1847.

APPENDIX.

POST-MORTEM EXAMINATION OF FREEMAN.

So great had been the conflict of medical opinions, as to the mental condition of William Freeman at the time he assassinated the Van Nest family, during his trial, and, indeed, until his death, that when the morning prints of the 21st of August, 1847, announced his death, the inhabitants of the city of Auburn, with an almost unanimous impulse, expressed each to the other the desire that the body of the wretched being should be examined. To some, his life had been one of crime; to others, it had been one of moral innocence, yet of misfortune and distress; to others yet, in numbers abundant, it had been a perfect, yet painful riddle, which they hoped medical science might enable the learned to solve, by a careful examination of the physical organs through which, in life, the prisoner's mind was manifested. A post-mortem examination, therefore, was called for, by a very large number of citizens who had taken no part in the excitement occasioned by the prisoner's homicides.

The resident physicians desired that Doctors Brigham and McCall might be notified by telegraph, and requested to attend. The desire was complied with, and those medical gentlemen attended. They did not reach Auburn, however, until nine o'clock in the evening, that being the hour for the arrival of the cars. Lest, during the inevitable delay of twelve hours for those gentlemen to arrive, the body might undergo some change to disguise his condition at death, it was deemed expedient by the resident physicians to remove his brain from the skull at once, and put the same in ice, where it might be preserved in condition until evening. This was accordingly done by Doctors Briggs and Fosgate, assisted by Doctors Willard and Robinson, at about nine o'clock in the morning of the 21st of August.

Doctors Brigham and McCall arrived in the cars at precisely nine o'clock, and proceeded to the office of Dr. Briggs, where they met Doctors Briggs, Dimon, Fosgate, Van Epps, Hyde and Luce, and a large number of lawyers and other persons assembled to witness an examination of the brain. That organ was then carefully dissected by Dr. Brigham, the attending physicians agreeing with him, as to the appearance of its several parts, when laid open to the view. At the conclusion of the examination, the following paper was drawn up by request of Doctor Brigham; and after being read to the other physicians present, all of whom assented to its correctness, was signed by the persons whose names appear thereto:

"STATEMENT.

"The undersigned being present at the examination of the brain of William Freeman, coincide in the opinion that this organ presented the appear-

ance of chronic disease; that the arachnoid membrane was somewhat thickened and congested; that the medullary portion was of an unnatural dusky color, and in places harder than natural, as if par-boiled; that the posterior portion of the skull appeared diseased, and the dura-mater at that point unnaturally adherent; and that the left temporal bone in the vicinity of the auditory nerve was carious and much diseased.

"A. BRIGHAM, CHARLES VAN EPPS,
"JOHN M'CALL, BLANCHARD FOSGATE,
"LANSINGH BRIGGS, CHARLES A. HYDE,
"WILLIAM O. LUCE.

"AUBURN, *August* 21, 1847."

On the twenty-third day of August the Editor of this volume consented to undertake the labor of preparing a report of the case. He thereupon addressed a note to the several physicians who where present at the examination, requesting, in reply, a statement of the particulars of the same, the facts discovered, and their deductions therefrom. In reply to that note, the following communications were received.

OPINION OF A. BRIGHAM, M. D.

STATE LUNATIC ASYLUM,
Utica, September 6, 1847.

SIR:—Your letter informing me that you intend publishing the trial of William Freeman for the murder of the Van Nest family, and requesting "a detail of the facts developed by the post-mortem examination of the brain of Freeman, with deductions therefrom, touching the enigma of his deeds," I have just received, and cheerfully hasten to comply with your request.

Anxious to witness the examination of the body of Freeman, I very readily complied with a solicitation to visit Auburn after his death; but I did not arrive until the examination had been partially completed, and did not see any part of the body except the brain and the upper part of the skull, and a portion of it, including the diseased ear.

I was, however, informed by Doctors Fosgate, Briggs, and other medical gentlemen, that the lungs were found much diseased, and that he died of consumption; symptoms of which had been observed for some time. I was also told that of late an increase of disease of the brain had been apparent; that there had been copious discharges of fœtid matter from one ear; that he had lost the sight of one eye; and that the muscles of the face on one side became paralyzed, and the mouth drawn to one side, several weeks previous to his death. I also understood that he had been for some time very feeble, and moved and spoke with extreme difficulty. They also read to me from notes they had taken of the post-mortem examination, that they found the dura-mater adherent to the posterior part of the skull, and the anterior portion of this membrane inflamed and congested, with considerable serum between it and the arachnoid membrane; and that the anfractuosities or grooves between the convolutions on the right side, were filled with serum, and the superficial vessels of the right anterior lobe of the brain highly congested on the superior surface.

The entire brain, without the dura-mater, weighed two pounds, eleven and three-fourth ounces; the cerebrum weighing two pounds six ounces, and the cerebellum five and three-fourths ounces.

After my arrival, about twenty hours after the death of Freeman, a more

minute examination of the brain was made by myself, in the presence of a large number of physicians and citizens of Auburn. We noticed that the skull was quite thin, and the upper posterior portion appeared diseased, as if it had been formerly injured and inflamed; and at this point the dura-mater was strongly adherent, and when removed, blood continued to ooze from the bone.

The arachnoid membrane was opaque, thickened and congested, and unusually firm. It could be removed from the convolutions, and then presented a thick net work of congested blood vessels, similar to what is most generally found in those who have died after long continued insanity. The gray or cineritious portion of the brain seemed partially atrophied in places, or thinner than usual, especially on the anterior and superior part of the brain, and the outside appeared harder than natural; while beneath this thin layer it was soft, and of the usual appearance.

The white fibrous or medullary portion of the brain was changed from its natural state. It was of a dusky gray color and presented numerous bloody points; and what was particularly noticeable, it was much harder and firmer than natural, and appeared as if its fibres had become adherent to each other, presenting an appearance similar to what is often, if not usually, seen in the brain of an insane person who has died from General Paralysis. This unusual hardness extended to the annular protuberance and the medulla oblongata. The left hemisphere of the brain was not quite as hard and firm as the right. The right thalamus appeared to have undergone some change, as if at some time previous there had been an effusion of blood into the middle of it, which had not been entirely absorbed.

The inner portion of the left temporal bone was carious, and the dura-mater covering this portion of the skull was red and congested. The membrane of the tympanum and the internal structure of the ear were destroyed by disease. There was also a collection of fœtid pus in a cavity of this bone, having no connection with the external ear. The cerebellum, and other portions of the brain not mentioned in the foregoing account, appeared natural.

As regards "*deductions*" from this post-mortem examination, it must be evident to every one who has even but a slight knowledge of the physiology and pathology of the brain, that such a condition of this organ and its membranes as was found in this case, was incompatible with the healthy performance of the mental faculties.

I have very rarely found so extensive disease of the brain in those who have died after long continued insanity, as we found in this instance; and I believe there are few cases of chronic insanity recorded in books, in which were noticed more evident marks of disease. It should be recollected, that although insanity is a disease of the brain, yet it usually is but a slight disease of this organ. If it was not so, it would soon prove fatal. Hence, we find many persons unquestionably insane to enjoy good bodily health for many years; the disease of the brain, though sufficient to derange the mind, not being so severe as to perceptibly disorder the general health. In such cases, after death, some disease of the brain or its membranes will be found, but usually less than in the case of Freeman.

The whole history of this man, his parentage, his imprisonment, punishments, deafness, crimes, trial, sickness, death, and the post-mortem appearance of his brain, establish, most clearly to my mind, and I doubt not to others who are much acquainted with mental maladies, that this was a case of insanity—that Freeman had disease of the brain, and was deranged in mind, from a period some time previous to his leaving prison, until the time of his death.

A slight review of his history may serve to render this more strikingly evident.

1. He was hereditarily disposed to insanity. An uncle and an aunt of his were insane for many years.

2. He had been exposed to causes, both mental and physical, likely to develop this disease: arrested and imprisoned when a boy but sixteen years of age, for a crime which there is good reason to believe he did not commit; whipped repeatedly in prison; and struck on the head with a board and rendered deaf.

3. After five years' imprisonment and seclusion, he came out remarkably changed in appearance, manners and character. From being a lively, cheerful, bright lad, he had changed to a dull, unsocial, and apparently idiotic being; complaining that he had been abused; that he had worked five years in prison, and ought to be paid for it. This notion engrossed all his thoughts.

4. Suddenly he undertook to right himself or to get his pay, and *solely* by the most bloody, yet most irrational means, (no doubt the offspring of insane delusion,) by "killing round awhile" as he phrased it, and without any attempt to plunder, or any regard as to whom he destroyed—indifferently men, women, the sleeping infant—those who were entire strangers to him, and whom he knew and acknowledged never had given him any cause of offence whatever.

5. Arrested for these crimes, and in answer to questions, he confessed all; but from that day to the time of his death, during his long protracted imprisonment and trials, he never asked a question respecting his probable fate, nor took the least interest in the proceedings for and against him; never asked his counsel a question, nor made any suggestion to them or to any one else. During his trial he did not betray the least emotion, nor exhibit any consciousness of what was doing in court, but day after day sat by his counsel, apparently regardless of every thing and every body, and without any change of countenance, except the frequent, unconscious laugh of the idiot. Even when called up by the Judge to receive sentence of death, he did not appear to know any thing of the proceedings that had taken place in court relating to himself; and when told by the Judge, "You have been tried for killing John G. Van Nest—the Jury say you killed him, and we are now going to sentence you to death;" and then asked by him, "Do you understand this; do you know what I mean?" answered, "*I don't know.*"

6. His appearance since his trial has been that of a person nearly bereft of intellect. I saw him the last week in June, and found him more demented than he was the year previous, during the trial; almost totally deaf and speechless, and apparently affected by General Paralysis. Never, scarcely, have I seen such a mere *fragment* of humanity, so far as mind was concerned.

7. He died of disease of the lungs—a disease of which a majority of the insane die; and his brain, on examination, exhibited those appearances of disease most generally found in those who have been long insane, though, in this case, to a greater extent than is usually seen.

In conclusion, I add, that at the time of the trial of Freeman, I was very confident that he was insane, and that the heinous crime he committed was the consequence of mental derangement. I can now have no rational doubt of the entire correctness of that opinion.

Very respectfully, your obedient servant,

A. BRIGHAM.

B. F. HALL, Esq., Auburn, N. Y.

OPINION OF JOHN McCALL, M. D.

UTICA, *September* 10, 1847.

B. F. HALL, Esq.—*Dear Sir:* In compliance with your request that I would "communicate in form for publication, the facts discovered at the examination of the brain of William Freeman, and my deductions therefrom, touching his insanity," I am glad in being able to say that I was present and witnessed the dissection and inspection, by Dr. Brigham, of the brain, its membranes and the upper part of the skull, and a portion thereof involving the left ear, as described so fully in the Doctor's report of the case for publication; and that I regard his statement as strictly correct in all respects.

That able physiologist and experienced physician in the management and treatment of the insane, has given you, in my opinion, a full and accurate account of the case; and hence I consider myself relieved from the labor of furnishing a detailed statement of the observations made and the deductions formed, as afforded on that occasion, "touching his insanity."

In the examinations made and witnessed by me, during nearly forty years' practice in my profession, I have never seen greater or stronger evidence of chronic disease of the brain, and its membranes, in cases of insanity of several years' standing, than in Freeman's.

My opportunities during his long trial, for judging and making up my mind respecting his sanity or insanity at the time he murdered a whole family in "cold blood," were such as enabled me to say, unhesitatingly, that he was, in my judgment, not only insane then, but at the time of the commision of the crime.

In my opinion his brain was permanently diseased at the time he left the State Prison. That his insanity, which was a consequence of that affection, continued to grow worse, until he became utterly demented, is a fact which I should hope no one can now doubt.

It is in this, as in every such case, very gratifying to the friends of medical and legal truth, to know that it was fully and severely investigated to the satisfaction, it is believed, of our whole community.

With these views I remain, my Dear Sir,

Very truly and sincerely,

JOHN McCALL.

OPINION OF DAVID DIMON, M. D.

AUBURN, *January* 4, 1848.

DEAR SIR:—William Freeman died on the twenty first of August, 1847, after a confinement in the jail of eighteen months. In the month of January previous, his lungs became diseased, in consequence of a severe cold. Previous to this attack his appetite and sleep were good, and his health did not appear to have suffered; and up to the time of his decease he had no delirium, but retained his senses to the last. A few days before his death I visited him, in company with Dr. Willard. He then answered questions correctly; and complained of great difficulty in breathing, and other distressing symptoms, which he referred to his lungs. The jailer informed me that he readily made known all his wants; and that when he had become satisfied that his disease would prove fatal, he manifested less reserve, was more willing to hear, and answered inquiries more readily than he had formerly done. The day previous to his death, Mr. Clough, an artist, in company with Mr. Van Anden, went into his cell to make a sketch of him. Upon Mr. Van Anden's

feeling his pulse, he asked him if he was a physician; showed him the matter which he expectorated; said he was too weak to sit up; that they would have to draw him lying down. After the sketch was finished, he wished to see it, and seemed much pleased with it.

A post-mortem examination of the body was made in the forenoon of the day of his death, in the presence of several physicians and citizens. His lungs were found extensively disorganized, and contained numerous ulcers, full of matter. The brain was removed from the skull, and the dissection of it deferred, until Doctors Brigham and McCall, who subsequently came from Utica for that purpose, should arrive. This examination took place at night. To the statement made by the other physicians, I could not subscribe. The arachnoid membrane had, to me, a uniform appearance, one part being no more thickened than another; and had a natural transparency throughout. The same was true, so far as I could see, of the substance of the brain. If there was any unnatural hardness or density of the brain, or alteration of color, (so far as color could be determined by candle light,) it extended, with remarkable uniformity, throughout its entire structure. No portion of it indicated, to my senses, any decided marks of disease. Whatever general unhealthy appearance it might have presented, which my experience would not enable me to detect, could be attributed to another disease, which was the cause of death, and about which there was no doubt and no difference of opinion.

Yours, &c.

B. F. HALL, Esq. DAVID DIMON.

OPINION OF BLANCHARD FOSGATE, M. D.

DEAR SIR:—In reply to your note requesting a statement of the post mortem examination of the body of William Freeman, at which I assisted, I beg leave to say that my views of that case are embodied in an article lately prepared by me, and published in the American Journal of the Medical Sciences for October, 1847. If that article will answer the purpose indicated in your letter, it is at your disposal. Yours, &c.,

B. F. HALL, Esq. BLANCHARD FOSGATE.

"WILLIAM FREEMAN—the murderer of the Van Nest family—was a native of Auburn, Cayuga Co., N. Y., twenty-three years old. In stature he measured about five feet seven inches, and when in health weighed in the vicinity of one hundred and fifteen pounds. He had a broad chest, and was of muscular make. With the exception of a slight admixture of aboriginal blood, he was of African descent.

"At the age of sixteen he was sentenced to five years' imprisonment in the State Prison at Auburn, for grand larceny. It was long since conceded that of this charge he was innocent. His sentence expired in September, 1845. He left his prison conscious of the injustice he had suffered, and had imbibed an idea that he was entitled to pay for his time. This sentiment could not be eradicated from his mind, and on several occasions he applied for warrants against those whom he supposed liable. Remuneration with him was the *one idea*. Failing in this mode of obtaining redress, he armed himself with a common butcher's knife, and a cane with a blade attached to the lower end, and from his lodging made his way toward the Owasco Lake, at about sunset on the 12th of March, 1846. After examining two or three premises, he finally selected the residence of Mr. Van Nest as the proper place to begin 'his work,' as he termed it, and there massacred Mr. Van Nest, his wife, and one child, aged two years, and Mrs. Wyckoff, aged

seventy. He stabbed Mr. Van Arsdale in the chest, who subsequently recovered. In the affray he entered every room in the house, both above and below, but took nothing away. He went to the stable, unfastened and mounted a horse, and was some rods from the scene of devastation in the incredibly short period of not more than five minutes from the time of entering the house, as was proved in evidence. Three days afterwards he was committed to Cayuga county jail to await his trial.

"He was tried at a special session of Oyer and Terminer, July, 1846—first, as to whether he was sane at the time of trial, and secondly, on the indictment. A verdict of *sufficient* soundness of mind to be put on trial was rendered on the preliminary issue, and of wilful murder on the indictment. A trial calling forth so much talent in its prosecution, and arousing such fearful excitement among the people, is of rare occurrence. Subsequently, however, a new trial was granted by the Supreme Court.

"On the part of the people, the cause was conducted by Hon. John Van Buren, Attorney-General of the State of New York, and for the defence by Hon. William H. Seward, Ex-Governor of this State.

"My knowledge of the prisoner commenced on the 16th of March, 1846, being the day after his commitment, and it continued until the completion of a post-mortem examination of his body on the twenty-first of August, 1847.

"During the scene at Van Nest's, he received a severe wound in the articulation of the right thumb with the carpus—the artery barely escaping division. This circumstance saved the lives of other members of the family, because, to use his own expression, 'he couldn't handle his hand any longer.'

"My services were required on account of this injury. In addition to the wound, I also found him entirely deaf in the left, and partially so in the right ear.

"It was a singular circumstance that he never made an inquiry as to either the extent or condition of the injury, or the time necessary to complete a cure, or the prospect of recovering the use of his hand—though it was the right, and as a laborer was his main dependence. Neither did he complain of any sensibility in the wound, although the physical evidences of pain accompanying the inflammatory stage were such as to leave no doubt of its existence. In fact, from the time of his commitment until the day of his death, although he often saw, and was attended by me through his last sickness, he asked only two questions, one about his medicine, the other regarding his diet, and these were made during his last illness.

"During the principal part of his incarceration, he passed his time standing; his body erect—his head a little drooping, and with arms folded. He sustained this posture with statue-like stillness—indicating great muscular strength. He exhibited a calm, quiet expression of countenance, occasionally broken by a smile, which had the appearance of just bursting into laughter, but would quickly subside, leaving the same unalterable expression, as undisturbed as though a gleam of mirthfulness had never occupied his fancies. To the careless observer, it appeared as though he endeavored to suppress an irresistible propensity to laugh. This smile was never accompanied by any vocal sound, but often glowed upon his features, regardless of time, place or circumstance, indicative of intense mental emotion. For this emotion he could never assign a cause. I say he never could, because, when asked, he always said he 'didn't know.' My conclusion is also based upon the remarkable fact, that on the trial, *seventy-two* witnesses on both sides coincided in the opinion that the prisoner did not intend to deceive in any reply made to the numerous interrogatories put to him.

"His deafness increased until the sense of hearing was nearly, if not quite, obliterated. I doubt whether he heard any conversation for the last two

weeks of his life; at all events, I could not get a reply that harmonized with my question.

"On the twelfth of June, 1847, I was called to see the patient as being 'not very well.' He had a quick, thready pulse—considerable cough, with free expectoration—not much appetite, but rather thirsty. He made no allusion to these symptoms, but directed my attention to his left ear, which discharged pus profusely. From this time forth, the aural discharge continued, accompanied by all the symptoms of tubercular phthisis, until his existence terminated, six days after the chain that bound him to the masonry of his cell had been removed.

"About three weeks previous to his decease, I observed a prominent protrusion of the left eye, and upon further examination there proved to be an entire obliteration of vision. He could not close the lids over it, for they, with all the muscles of that side of the face, were paralyzed, and the mouth considerably drawn to the right. The cornea of both organs had much the same appearance. The loss of vision, I am inclined to think, was the result of functional, not organic, lesion. The protrusion depended most probably upon the loss of muscular power in its motor apparatus, in common with the muscles of that side of the face. The globe, in *articulo-mortis*, recovered in a great measure its natural location, as did the paralyzed muscles of the face—a common occurrence of facial distortion from nervous lesion at death.

"Owing to insufficiency of light in the cell, but more particularly to the shattered condition of the patient—being deaf, almost blind, and nearly speechless—no satisfactory account of symptoms or the effect of remedies could be obtained from him.

"As this case presents points of interest in many particulars, I would remark that phrenologically, Mr. Fowler says, 'he is very defective in the mental temperament, and has great predominance in the muscular. His propensities (with the exception of self-esteem and firmness, very large—and combativeness and destructiveness, large) are all small, and have but little influence. The intellectual faculties are not so small, yet the quality of brain considered, their influence is quite limited. He has one of the most imperfect developments of brain I ever saw. He has no real balance to his mind; it is entirely one-sided, he being at the mercy of circumstances, and the stronger propensities.' (See *Phrenological Almanac* in press for 1848.) Another phrenologist, though of less notoriety, has allowed him a much better development; but whatever the external evidences of mind the contour of his head may denote, they all have reference to a healthy brain.

"I have measured his cranium in two ways: First, by passing a string across the frontal and around the spinous process of the occipital bones. It measured, in the greatest circumference, twenty-one inches. Secondly, after the directions laid down in Combe's Phrenology, by callipers.

Viz. from occipital spine to individuality,	7 3-8	inches.
" occipital spine to ear,	4 4-8	"
" ear to individuality,	4 6-8	"
" ear to firmness,	5 3-16	"
" destructiveness to destructiveness,	5 3-8	"
" cautiousness to cautiousness,	4 7-16	"
" ideality to ideality,	5 1-8	"

"On proceeding to a post-mortem examination, the body was found extremely emaciated. The costal and pulmonary pleura, though easily separated, were extensively adhered, and the lungs were an almost entire mass of disease. Tuberculous matter was interspersed with abscesses throughout the whole organ. The pericardium contained about one and a half gills of

serum. The heart contained polypi, but had a healthy appearance. Liver natural. Gall bladder a little distended. Mucous membrane of the stomach slightly inflamed. Intestinal mucous coat healthy. Mesenteric glands tuberculous. Urinary bladder distended. Kidneys natural. The peritoneum appeared healthy, but the sac contained some fluid.

"Upon opening the cranium, the bones were found rather thinner than ordinary, particularly for a colored subject, and the dura-mater was adherent to a portion of the occiput. The anterior portion of this membrane was congested and inflamed, with considerable serum between it and the arachnoid. This latter tunic was somewhat thickened and congested. The anfractuosities of the right hemisphere of the cerebrum were filled with serum. The superficial vessels of the right anterior lobe highly congested on the superior surface. Cerebellum to all appearance healthy.

"The whole brain, separate from the dura-mater, weighed 43 3-4 ounces avoirdupois. Cerebrum 38 ounces. Cerebellum 5 3-4 ounces.

"On section of the medullary substance, it was found thickly studded with bright red points. The right thalami appeared to have undergone some change, and the whole superior brain was more or less congested. The membrane covering the petrous portion of the left cavity was congested, and the remaining parts of it appeared healthy.

"There were caries of the inner part of the petrous portion of the left temporal bone. The membrana tympani, with the internal structure of the ear, mostly obliterated. There was a necrosis containing fetid pus, having no perceptible connection with the external ear.

"*Remarks.*—The important question connected with this subject is, whether the pathological state of the brain, its membranes and the ear, is one of long standing or of recent occurrence? On this point rests the physical evidence of the prisoner's accountability. If by possibility it could be determined that the organ of mental manifestation was without disease when the crime was perpetrated, then depravity unparalleled must be assigned as the only cause; and if so, the disease of the organ at his decease could not be held in extenuation of his crimes.

"That the diseased condition of the brain was of long standing, appears to be unquestionable from the fact, that the mental organ could not sustain so great a lesion as the autopsy presented, without the mind having exhibited sudden and violent derangement, as well as other symptoms which accompany its acute diseases. This, however, was not the case. He never complained of, or exhibited the ordinary symptoms in such instances, nor ever gave evidence of any mental change whatever; but on the contrary, presented the same characteristics throughout. During his last sickness, there was not a single symptom indicating acute inflammation of the brain, and yet, on examination after death, there were abundant and unequivocal evidences of inflammatory action there.

"The disease of the ear also was chronic, and dated its commencement some months previous to the commission of the crime. On his trial it was proved in evidence that about two years previous—when an inmate of the State Prison—he was struck on his head with a board, the blow splitting the weapon into fragments. He attributes his deafness to this cause, or, to give his own description, 'it knocked his words down his throat—his ears dropped down—his kernels (meaning the tonsils) dropped.' Now, the infliction of this blow upon a thin skull, associated with his own account of its effects, would lead us to conclude that the concussion seriously injured the auditory apparatus. It possibly burst the tympanum, and if so, it opened a communication between the external ear and the fauces, which induced the remark that 'it knocked the words down his throat,' &c. Is it not a just conclusion, that from this injury the diseased action was set up, which ultimately involved the whole brain?

"Whether the facial paralysis was the result of cerebral congestion, or whether it was owing to a diseased state of the nerves of motion in connection with the condition of the ossa petrosa, may be questionable, because the nerves, as they passed off the brain, were apparently healthy; but the right hemisphere of the brain being the most deeply implicated in the organic derangement, the paralysis would appear, as it did in this case, in the muscles of the opposite side.

"It should not be forgotten, that the deceased had passed through scenes of blood seldom equaled, where but a single individual was the aggressor; that he had been surrounded by the wild fury of an enraged populace for hours; that he had been chained, and for a portion of the time bedded upon the stone floor of a dimly-lighted cell, for almost eighteen months; suffering the jeers and grimaces of inhuman and uncounted spectators; wasting by the slow process of consumption; sustaining the blight of one physical energy after another; with little compassion and less than ordinary attention; and through the whole period, having scarcely asked a question regarding either friend or foe, soliciting no favor, showing no hatred, exhibiting no remorse, entering no complaint, and through all, sustaining an *undisturbed tranquillity*.

"From this concatenation of circumstances, this unruffled, equable, almost idiotic state of mind, that no external relation could disturb, or internal influence alter, we can scarcely come to any other conclusion by pathological reasoning, than that the state of mind which he exhibited subsequent to his arrest, depended on a chronic derangement of the mental organ, and must have existed antecedent to the crime itself. If such a combination of pathological facts, and all the other circumstances attending the prisoner from his arrest to his death, do not establish an unsound state of mind, they at least present one of the most extraordinary cases furnished by the annals of our race. Such a case demands the careful consideration of the philosopher and jurist.

'How much the cause of justice and philosophy is indebted to the unwearied perseverance of the eminent advocate who withstood the tide of popular indignation in conducting the prisoner's defence, is left for other hands to register; but true it is, that over prejudice and error, science has gloriously triumphed.

"BLANCHARD FOSGATE.

"AUBURN, N. Y., Sept. 1, 1847."

NOTE.—In the April number of the American Quarterly Retrospect of American and Foreign Practical Medicine and Surgery, for 1848, the above article by Dr. Fosgate is re-published, with the following comment by the learned Editor: "We publish this case not only for its intrinsic interest in an historical and moral point of view, but because it is drawn up with uncommon elegance, and in a medico-legal point of view affords a most striking illustration of the importance of this science to the welfare of men. It saved, in this instance by its generous application, the life of an unaccountable agent from sacrifice."

OPINION OF LANSINGH BRIGGS, M. D.

AUBURN, *August* 23, 1847.

HON. B. F. HALL.—*Dear Sir*: In reply to your note of this morning, I would observe, that the man Freeman, therein alluded to, died on Friday last of consumption; disease of the brain, probably, having no immediate agency in his death. I never could discover any thing in his case, making it an exception to the fact, that a very considerable and decided departure from sanity may exist without interruption to tolerably good bodily health during life, or exhibiting visibly, corresponding lesions of the brain on in-

spection after death. Consequently, aside from the extensively and long diseased condition of one ear and the lungs, I did not anticipate any strikingly morbid appearances on examination; nor did I deem such manifestations indispensable to prove him previously insane, as there were otherwise abundant and convincing evidence to establish the fact, in my opinion, that that was his condition.

The *post-mortem* examination was made about twelve hours after death, and for a "statement of the result—the facts discovered and deductions made therefrom," I would refer you to the very intelligent and accurate notes, made on the spot by Dr. Fosgate, and to the enclosed original paper* drawn up and subscribed at the time and place of examination.

I remain, very respectfully,

Yours &c.,

LANSINGH BRIGGS.

OPINION OF CHARLES A. HYDE, M. D.

AUBURN, *September* 13, 1847.

HON. B. F. HALL.—*Dear Sir:* Your communication requesting me to furnish you with the particulars in reference to the post-mortem examination of the brain of William Freeman, is received, and in reply I would briefly say, that I am unable to do so just now, from the fact, that I have not at this time in my possession the minutes of the case, (save those already before the public,) and therefore would respectfully beg permission to refer you to some one of my colleagues who was present at the autopsy, and carefully noted all the diseased appearances of the different organs and tissues in the case, at the time, as we progressed in our examination; and thus, by obtaining a full and clear exposition of all the diseased parts of the entire system of the man, you will have a data, from which you may arrive at a just conclusion, deducible not only from the morbid appearances of the brain itself, but also from the pathological state of the other organs and viscera, all of which are intimately blended in the performance of their multiplied and varied operations and functions, in a physiological point of view, and which evidently exhibited greater ravages of disease than that of the brain, and was the immediate cause of his death.

It is to be regretted that the article drawn up and subscribed, at the spur of the moment, by the medical gentlemen present, had not been more full and explicit before it found its way into a public newspaper; for it is to be apprehended, that erroneous opinions will thereby be promulgated; especially when prefaced by a long editorial, calling Freeman a perfect idiot. We regard speculation of this kind as irrelevant or merely hypothetical, and consequently, unreliable and fallacious.

The medical profession, as well as the public, require opinions ratiocinative, based upon a knowledge of the entire history of the case, and sustained by known scientific principles, in order to arrive at the truth in regard to the important and long controverted questions of sanity or insanity. It is only from deductions thus correctly drawn, that we shall be enabled to promote the interests of community, and thereby subserve the legitimate ends of public justice, and make reliable those necessary, important and fundamental laws of medical jurisprudence that constantly govern our penal courts of judicature.

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* The paper, a copy of which appears on page 497 and which was signed by Doctors Brigham and others, on the evening of the 21st of August, 1847. Dr. Briggs testified, that he believed Freeman's mind to be disordered; and hence, his remark that "there were otherwise abundant and convincing evidence, to establish the fact in my opinion, that that was his condition."

I will, therefore, particularly refer you to Dr. Brigham, of the State Lunatic Asylum at Utica; whose peculiar province it is to deal with cases of this kind, as he is in possession of all the facts, and will in due time give them to you and the public, as well as the medical profession.

Yours, very respectfully,

C. A. HYDE.


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