

Report on the trial of Daniel H. Corey on an indictment for the murder of Mrs. Matilda Nash : at the term of the superior court of judicature holden at Keene, in the county of Cheshire, on the first Tuesday of October, A.D. 1830 / by Joel Parker.

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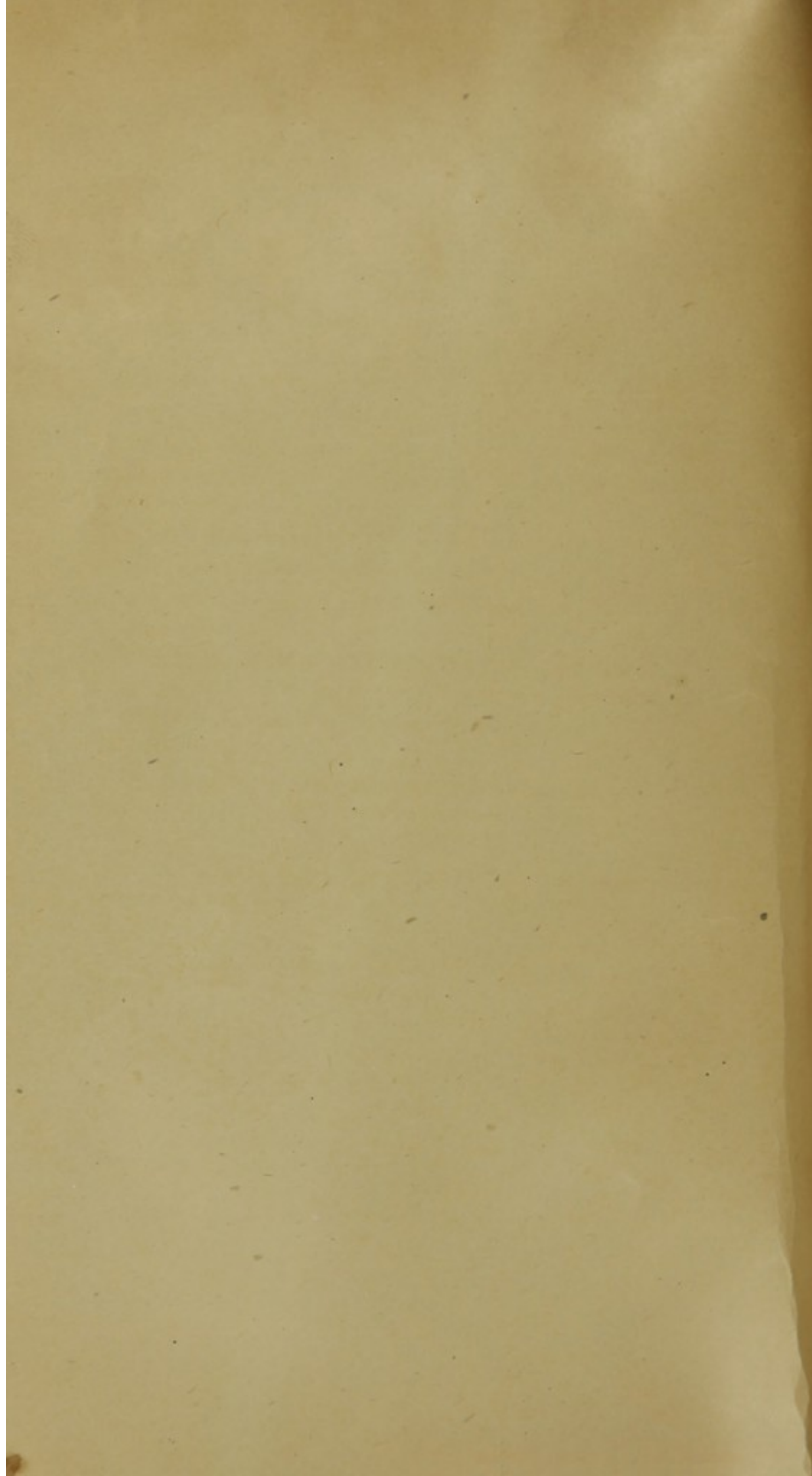


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PARKER (JOEL)

Report of the trial of
Daniel H. Corey, on an
indictment for the murder
of Mrs Matilda Nash x x x





REPORT

OF THE TRIAL OF

DANIEL H. COREY,

ON AN INDICTMENT FOR THE MURDER OF

MRS. MATILDA NASH,

AT THE TERM OF THE

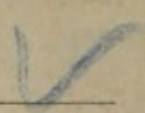
SUPERIOR COURT OF JUDICATURE,

HOLDEN AT KEENE,

IN THE COUNTY OF CHESHIRE,

ON THE FIRST TUESDAY OF OCTOBER,

A. D. 1830.


BY JOEL PARKER.



NEWPORT:
FRENCH & BROWN.
1830.

THE principal part of the following notes of the trial of *D. H. Corey*, were taken in the course of professional engagement, and without a view to publication.

To the circumstances which have induced the reporter to commit them to the press, it is unnecessary to advert.

The notes of the evidence have been examined by J. WILSON, jr. Esq. one of the counsel for the government, and L. G. MEAD, Esq, who took brief notes of the evidence during the greater part of the trial, and a few additions have been made on their suggestion.

The remarks of the Counsel, with the exception of those of the Solicitor, have been revised and drawn out by the several gentlemen engaged in the trial, and the notes of the charge of the Court have been submitted to the revision of His Honor the Chief Justice.

The incidental conversation which occurred during the trial, was not taken down at the time, except in a few instances. So far as it could be recollected with accuracy it has been incorporated.

It is believed that nothing has been omitted which is essential to a correct understanding of the case.

REPORT.

ON the 15th of June, 1829. Daniel H. Corey, of Sullivan, was examined at Keene, in the County of Cheshire, before Mr. Justice DUNBAR, assisted by Justices HALE and COOLIDGE, on a complaint for murdering Mrs. Matilda Nash, at Sullivan, on the 13th of said June, and was ordered to stand committed.

At the October Term of the Superior Court of Judicature for said County of Cheshire, the Grand Jury returned the following indictment.

STATE OF NEW-HAMPSHIRE.

CHESHIRE, ss.

At the Superior Court of Judicature, holden at Keene, within and for the County of Cheshire, on the first Tuesday of October, in the year of our Lord one thousand eight hundred and twenty-nine—

The Jurors for the State of New Hampshire on their oath present—That Daniel H. Corey, of Sullivan, in the County of Cheshire aforesaid, yeoman, on the thirteenth day of June, in the year of our Lord one thousand eight hundred and twenty-nine, with force and arms, at Sullivan aforesaid, in the County of Cheshire aforesaid, in and upon one Matilda Nash, in the peace of God and said State then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that he the said Daniel H. Corey, with a certain gun of the value of five dollars, which he the said Daniel H. Corey then and there had and held in both his hands, the said Matilda Nash, upon the right side of the head of her the said Matilda Nash, then and there feloniously, wilfully and of his malice aforethought, did strike and smite, giving to her the said Matilda Nash, then and there with the gun aforesaid, in and upon the right side of the head of her the said Matilda Nash, one mortal wound, of the length of five inches, and of the depth of two inches; of which said mortal wound, given by the said Daniel H. Corey, in manner aforesaid, with the gun aforesaid, the said Matilda Nash, to wit, at Sullivan aforesaid, in the County of Cheshire aforesaid, on the thirteenth day of June aforesaid, instantly died—and so the Jurors aforesaid, upon their oath aforesaid, do say that the said Daniel H. Corey, her the said Matilda Nash, in manner and form aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder—contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

LEVI CHAMBERLAIN,
Solicitor for the County of Cheshire.

This is a true bill,

BENJAMIN NEWELL, *Foreman.*

On this indictment the prisoner was arraigned and pleaded *Not Guilty*.

His friends then requested the Court to assign Messrs. L. WOODBURY, H. HUBBARD and J. PARKER, as his counsel. The Court remarked, that they were authorized to assign two counsel only, but that any other might be employed, and assigned Messrs. Hubbard and Parker—and Mr. Woodbury was associated with them in the defence.

The Attorney General being absent, and the defence of the prisoner being Insanity, for which preparation had not been made, and it being understood that Messrs. Woodbury and Hubbard would necessarily be absent at the next term, attending a session of Congress, it was agreed, with the consent of the Court, that the case should stand continued until the October term, 1830.

At the October term, 1830,

PRESENT.

HON. WILLIAM M. RICHARDSON, *Chief Justice.*
 HON. SAMUEL GREEN, } *Justices.*
 HON. JOHN HARRIS, }

Monday of the second week of the term was assigned as the day of trial—and, in the absence of the Attorney General, Messrs. P. HANDERSON, and J. WILSON, jr. were associated with Mr. CHAMBERLAIN, the Solicitor, in conducting the prosecution.

On the day assigned, the prisoner was set to the bar, and forty-nine jurors appeared and answered.

The Clerk then addressed the prisoner :

" Daniel H. Corey—These good men who have been called, and have answered to their names, are those who are to pass upon your trial. You have a right to object to twenty of them without giving any reason, and to more if you can show sufficient cause. If, therefore, you wish to object to them, or any of them, you may challenge them when they are called to be sworn, and before they are sworn, and you shall be heard."

The list was then called over in the usual form in capital cases, the Clerk, as each juror was called, and rose, repeating—" *Juror, look upon the prisoner—prisoner, look upon the juror—what say you—have you any objection*"—and the jury were selected as follows :

Elijah Walton,	of Chesterfield,	Challenged.
Abishai Wetherbee,	Do.	Do.
Samuel Burt,	Do.	Do.
Franklin Bond,	Dublin,	Do.
Moses Wark,	Do.	Do.
Cyrus Frost,	Do.	Do.
Jude Damon,	Fitzwilliam,	Do.
Thaddeus Cummings,	Do.	Do.
Samuel Patch	Do.	Do.
Ebenezer Isham,	Gilsum,	

The Counsel for the prisoner objected to this juror, that, coming from the vicinity of the place of the transaction, he had probably heard much conversation on the subject, by which his opinion might be influenced. They wished, they said, an impartial jury, of men who lived remote, and were not likely to have heard any thing calculated to influence their decision.

The Solicitor contended that the juror ought not to be rejected unless it appeared that he had actually formed an opinion—but the Court said he might be—

Luther Abbot,	Gilsum,	Objected to	Passed by.
son, and			Passed.
Obed Slate,	Hinsdale,		Challenged.
Hezekiah Horton,	Do.		Sworn.
Abner Bayley,	Jaffrey,		Do.
Ezra Baker,	Do.		Do.
Paul Hunt, jr.	Do.		Do.
John V. Wood,	Keene,		Challenged.
Phinehas Nurs,	Do.		Do.
Thomas Thompson,	Do.		Do.
Eber Tenney,	Marlborough,		Sworn.
Abiel Alger,	Do.		Do.
James Downing,	Marlow,	was asked if he had formed	
ed an opinion—said that he had heard considerable upon the sub-			Passed.
ject and was			Passed.
Thomas P. Richardson,	Marlow,	Objected to on ac-	
count of vicinity, and			Passed.
Francis S. Bryant,	Nelson,		Sworn.
Amos Stoddard,	Do.		Do.
Moses Hale,	Rindge,		Challenged.
Isaac Wood, jr.	Do.		Do.
Charles Mixer,	Do.		Do.
Daniel Goodnow,	Roxbury,	On enquiry, replied,	
that he had heard much said—and was			Passed.
Solomon Kingsbury,	Roxbury,		Sworn.
John D. Copeland,	Stoddard,		Passed,
on account of vicinity.			
Rufus Wilson,	Do.		Sworn.
Lyman Copeland,	Do.	Passed, on account of vicinity.	
Ellsworth Hubbard,	Sullivan,		Do.
Benjamin Kemp, jr.	Do.		Do.
Seth Carpenter,	Surry,		Do.
Asabel Harvey,	Do.		Do.
Luke Bennett,	Swanzey,		Sworn.

Eleven jurors having been selected, and the prisoner's right of challenge not having yet been exhausted, his counsel said they were willing to take from the list not called,

Luna Foster, Westmoreland, and he was ordered to be called and sworn, the Court remarking, that it was usual to permit the prisoner to select, from the list of jurors returned, much as he pleased; and Mr. Woodbury observing, that such course was peculiarly proper in this case, as his counsel waived an exception to the form of the list, as furnished him.*

* See note A.

Solomon Kingsbury, Esq. was then appointed Foreman, and the jury called over as follows :

Solomon Kingsbury,	Abiel Alger,
Hezekiah Horton,	Francis S. Bryant,
Abner Bayley,	Amos Stoddard,
Ezra Baker,	Rufus Wilson,
Paul Hunt, jr.	Luke Bennett,
Eber Tenney,	Luna Foster.

The jury having been empaneled, the indictment was read to them by the Clerk, after which he proceeded—*“To this indictment the defendant has pleaded not guilty, and has put himself on the country for trial, which country you are ; and you have been sworn to truly try the issue. May God send him a good deliverance.—Good men and true, stand together and hearken to your evidence.”*

MR. WILSON opened the case. He said, he appeared in behalf of the government, at the request of the Solicitor for the county, who had the care of the criminal business, in the absence of the Attorney General, and by leave of the Court he would state the evidence to the jury, and explain, under direction of the honorable Court, the principles of law applicable to the prosecution. He was aware that the duty which had been assigned to him was of no pleasant character, and he doubted not that the duties which devolved upon the Court, the Jury, and the Counsel, as well for the government, as for the prisoner, were alike painful and unwelcome : They were, however, publick duties, and the well-being of society required that they should be fearlessly and faithfully performed. It was in the law, when duly administered, that the publick reposed confidence, it was then that the publick regarded the law as their defence, and security, the shield that protected to them their dearest rights.

When, therefore, the peace and harmony of society should be unlawfully disturbed—when the rights of any individual in the community should be infringed, his property, his liberty, or his life endangered or destroyed—when the wholesome laws of our country should be violated, and the peace and dignity of the state insulted—then the publick demanded that the offender be brought to justice, and if guilty, to punishment. The law afforded equal protection to all ; it guarded every man’s domicil, whether it were the “cottage of mud or the palace of marble.” It was a coat of mail, well adjusted to every man’s person, and furnished equal security to the child of poverty and want as to the dignitary of state.

In the present case, the government had charged upon the prisoner at the bar, one of the highest offences known to its laws. It was for them to try the cause ; It was for them to pass between the government and the prisoner

upon the law and the evidence, and to give their verdict. Should the evidence which the government would submit to them be sufficient to remove, from their minds, all reasonable doubts of the guilt of the prisoner, as he was charged in the indictment, it would then come upon them as an imperious duty to be performed to the publick, a duty which they owed to themselves under oath—in the presence of the Court and the prisoner, and in the presence of *Almighty God*, to pronounce the prisoner Guilty, regardless of the awful consequences of that verdict, to him whose life may have been forfeited to the law.

It was incumbent on the government to prove the killing as alleged in the indictment, and the evidence upon which the government relied to establish that fact, would be in substance, that—

On Saturday, the 13th June, 1829, about noon of that day, Mrs. Corey, wife of the prisoner, with her child and mother, and other members of the family, went to the house of Mr. Daniel Nash, in Gilsuam, being about seventy or eighty rods from the house of the prisoner. Mrs. Corey made complaint there that her husband had abused her and the family, and that she was afraid to stay at home, in the house with him, lest he should do them some serious harm. She, Mrs. C. requested Mrs. Matilda Nash, an aged lady, to go up to Corey's house and try to calm him. Mrs. Nash consented to go, and took along with her a small bundle of flax that she might have an errand for calling at his house. Mrs. Nash went, accompanied by a little girl, and when she came to the door of Corey's house, which was open, she spoke to him, and said, "Mr. Corey, how do you do?" Corey at this time was lying on the bed, he spoke to her, and said, "what are you here for, get out of my house or I'll kill you"—Corey sprung from the bed, seized his gun, which hung upon hooks in the room—Mrs. Nash and the little girl run from the house as fast as they could—the girl being forward and Corey pursuing. About seven rods from the house, Corey came in reach of the old lady, and, holding the gun in both hands, struck her upon the head with the breech of the gun, and felled her to the ground; he struck her once after she had fallen, and then pursued the little girl a short distance, but not being able to overtake her until she came in sight of Daniel Nash's house, he did not follow far. The little girl ran home, informed the family, and went immediately to the field and informed her father, Mr. Daniel Nash, that Corey had killed her grandmother dead in the road. Daniel Nash, after the information he had received from his daughter, went and found the corpse of his mother. She was perfectly dead, her head horribly broken and mangled,

and the brains scattered upon the ground. The breech of the gun had been broken from the barrel and was lying on the head of the deceased. Nash, when he first went to the place where he found the body of his mother, heard some noise in Corey's house, but being alone he did not go up to the house; he immediately gave the alarm; some people, who were in an opposite direction, hearing the alarm, went up towards Corey's house, and, on the way, they met Corey in the woods, with the gun barrel in one hand, his hands and shirt bloody, and the gun barrel, at the breech pin, and part way up the barrel, drenched in blood. Although those who met Corey had heard the cry of murder, and saw him in this suspicious condition, they were ignorant of what had been done, and did not arrest him; but one of them took from him the gun barrel, and they then went on to his house. There they soon learnt the tragical story, and immediately returned in pursuit of Corey. He was taken in a short time and placed in the custody of the law.

The law applicable to this case he would cite from acknowledged authorities.

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

"p. 199. If, even upon a sudden provocation, one beats another in a cruel and unusual manner, so that he dies, though he did not intend his death, yet he is guilty of murder by express malice; that is, by an express evil design, the genuine sense of *malitia*. As when a park-keeper tied a boy that was stealing wood to a horse's tail and dragged him along the park, when a master corrected his servant with an iron bar, and a school master stamped on his scholars belly, so that each of the sufferers died; these were justly held to be murders, because the corrections being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of slaughter."

5 *Bac. Abr. title—Murder and Homicide. C. 1. p. 121.*

"Herein it seems to be agreed that any formed design of doing mischief may be called malice; and that not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be a malice prepense."

Same, p. 122. "And it hath been adjudged, that even upon a sudden quarrel, if a man be so far provoked by any words or gestures of another, so as to make a push at him with a sword, or to strike him with any such weapon as manifestly endangers his life, before the other's sword is drawn, and thereupon a fight ensue, and he who made such assault kills the other, he is guilty of murder; because that by assaulting the other in such an outrageous manner, without giving him an opportunity to defend himself, he shewed that he intended, not to fight with him, but to kill him, which violent revenge is no more excused by such a slight provocation than if there had been none at all."

Same, p. 124. "If a person in cool blood, by way of revenge, deliberately beat another in such a manner that he dies of it, or if a man upon a sudden provocation, execute his revenge in such a manner as shews a cruel and deliberate intent of doing a personal hurt, he is guilty of murder."

Same, p. 182. C. 2. "Herein it is laid down, that when one voluntarily kills another without any provocation, it is murder, for the law presumes it to be malicious, and that he is *hostis humani generis*, and therefore it is necessary for him, who happens to kill another, to shew such a provocation as will take off the presumption of malice. It seems agreed that no affront by bare words or gestures, however slighting, or however false and malicious they may be, and aggravated by the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him in such a manner as manifestly endangers his life."

East's P. C. Vol. 1. p. 214. "Murder, in the sense in which it is now understood, is the voluntary killing any person under the king's peace, of malice prepense or aforethought, either express or implied by law; the sense of which word, malice, is not only confined to a particular ill-will to the deceased, but is intended to denote, as Mr. Justice Foster expresses it, an action flowing from a wicked and corrupt motive, a thing done *malo animo*, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent upon mischief. And therefore malice is implied from any deliberate, cruel act against another, however sudden."

Same, p. 224. "The implication of malice, arises in every instance of homicide amounting in point of law to murder: and in every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity are to be satisfactorily proved by the prisoner, unless they arise out of the evidence produced against him."

6 *Dane's Abr. Amr. Law, Ch. 197, Art. 7. § 3.* "Malice may be express or implied: express as if one formed a deliberate design to kill a man and kills him, this is malice express, and murder, and is evidenced in many ways: as in duels, lying in wait, &c: so it is express malice and murder if A, even on a sudden provocation, beats B, in a cruel and unusual manner, so that he dies, though he did not intend death, for here is an express evil design: as where the park-keeper found a boy stealing wood, and tied him to a horse's tail and he was killed; held it was murder by express malice. So where a master corrected a servant with an iron bar and killed him; held this was murder, because such excessive correction could but be attended probably by death or bloodshed, and could proceed but from a wicked and corrupt heart. Hale says, malice in fact, is a deliberate intention of doing some corporeal harm to the person of another, 1. *Hale P. C. 451*, not authorized by law."

Same, Chap. 197, Art. 7. § 5. "When a man attacks another with a dangerous weapon, without any provocation, that is express malice, from the nature of the act, which is cruel." § 6. 3d. "Malice depends much on the provocation or no provocation; for if A, for a reasonable provocation, strike B. and kills him, it is not malicious and no murder; as if a parent or master be provoked to a degree of passion, by some improper behaviour of a child or servant, to correct him with a *moderate weapon*, and unluckily kills him, it is but a *misadventure*; but if with an *improper weapon* and the child or servant is killed, it is murder, and the *malice prepense is implied*, that is, murder, if the weapon or manner may probably kill or maim, but manslaughter, if only a cudgel, or other weapon, not likely to kill or maim; so if the manner be not likely to produce death or mayhem; manslaughter, because the weapon or manner is *improper*, though not likely to produce the loss of life or limb. Here the law makes three distinctions: 1, If the master correct his servant with a *proper* weapon or instrument and death happens to ensue, it is by accident, and not malicious, if done too in a proper manner; 2, But if with *improper* instruments, or in an improper manner, though not likely to kill or maim, but death does ensue, it is manslaughter; because there is a want of caution and care, but no *malice prepense*; 3, If with *dangerous* weapons, likely to kill, then murder where death ensues; because the

weapon is a dangerous one, and the very use of it is cruel, and therefore *malice is implied* in the use of it." (*Mr. Wilson here read from Dane the note of Gray's Case, Kelynge 133.* "All the books agree that no words or gestures, however provoking, will justify one in using a dangerous weapon for correction, or a dangerous mode, so this case of Gray, proves, that neglect of duty in a servant, will not justify any but moderate correction, with a proper instrument." 6 *Dane*, 648

The law upon the whole case, Mr. W. said, would be given them by the Court.

If the jury should find the killing by Corey, without provocation, with a dangerous weapon, used in a manner calculated to produce death, they could not, he contended, avoid finding him guilty.

The Counsel for the government then proceeded to introduce the evidence in support of the prosecution.

Daniel Nash—called—

The prisoner's counsel objected, that the list furnished him did not designate the place of abode of the witness. The entry was merely "Daniel Nash, Gilsum," without any specification of State or County—and they cited the Case of Farnald, Strafford, February Term, 1825, where the residence of one witness being described as of Gilmanton, and the next by the abbreviation "do" under it, the Court, on a similar exception being taken, expressed strong doubts as to the sufficiency of the description.

The Court held that the entry in the list was to be intended to mean, of Gilsum, in the County of Cheshire, and it being ascertained that the witness in fact lived in that town, the exception was overruled and the witness *sworn* *—

Examined—On the thirteenth of June, 1829, he found his mother seven rods from Corey's door—she was perfectly dead—found a little budget of flax lying by her, and the breech of a gun lying on her cheek. (Piece presented :) knows it to be Corey's. Thinks this was not far from twelve o'clock. Started off after Corey, found him seventy or eighty rods from the house in the bushes, when witness first discovered him, he was running on towards his house—was not then taken—was taken an hour after—dont recollect about the appearance of his shirt and hands when taken. When witness got hold of him he told Corey if he offered to defend himself, he would smite him, for he had got the piece of the gun he had killed his mother with. Corey said, "Oh no, I was crazy."

When witness found his mother, her head was very badly wounded right about there, (pointing to the right side of his own,) could lay his arm in—the bones were broken and the brains scattered on the ground.

Witness' house is about sixty rods from Corey's—can see the top of his chimney—can see the road between, except some pitches—there is a rise of ground between—could not see the place she was found at from witness' house—she would have had to come eight or ten rods further to get in sight of his house.

Corey was at work that day on the south east part of his lot, not in sight of witness' house, but in sight of his own—saw him that day before, but did not speak to him.

Witness went up there because his girl came and told him that Corey had killed her grandmother dead in the road.

Cross-examined. There is nothing but a path between his house and Corey's. When he first saw Corey after the killing, he was

* See note B.

seventy, eighty, or ninety rods from his house, when witness first came up to him he was sixty or seventy. John Davis, Cyrus Bliss, Benj. Corey and others were present. This was the first time he saw him after the death—he was west of his house—dont know what he was doing—dont know that he had a pail, or the gun barrel—he was then going towards his house—he was close to the place which was called his mine. Some of the rest hallooed to him, and told him he had better give up. Witness took hold of him last—can't say who was first—Benjamin Corey took him before witness did—Mr. Bliss, Mr. Davis—a number of them took hold of him. He made no resistance.

Elizabeth Nash—sworn.

Examined by prisoner's counsel—said she was twelve years of age the first of last June—had never been in court in any other case—knew the obligations of an oath. On being asked what duty it imposed on her, said she calculated to tell the truth—and to the enquiry what punishment she should expect if she did not tell the truth, replied “all liars shall have their part in the lake that burns with fire and brimstone.”

Examined by counsel for the State—Witness went up to Corey's house with her grandmother, who stepped in and said “how do you do Mr. Corey.” He said, “get out of the house or I'll kill you”—the door was open and he was on the bed—he jumped off the bed, got the gun, and followed them—grandmother said nothing—they run—he struck her grandmother with the gun—he held the gun with both hands—held it to the left—her face was from him, and he behind her. Witness was before her grandmother about a rod—turned her head round and saw it. Is sure he held the gun to the left. The gun was hung upon hooks.

They run as fast as they could—witness looked over her right shoulder.

Corey did not follow witness to the fence—He struck her grandmother once after she was down.

When he followed witness, after striking her grandmother, the gun was not broken.

There was nobody in Corey's house but himself. Mrs. Corey was at witness' fathers—Her mother and her children came with her.

Cross-examined. Cannot tell how far the fence is from the house—Did not go into the house at all—Dont recollect how far she was off when the deceased went in—was not at the door—was not a rod off—Fence is more than two rods.

Witness stepped on the east side of the door, deceased on the west—could see in. The bed was on the south side of the house—door the south side—bed the east side of the door—head of the bed east. Corey said, “get out of the house or I'll kill you”—said nothing else. He got off the bed before she turned about. As soon as he got off they turned about. Saw the gun hanging in the middle of the room.

Witness was a rod before her grandmother and very much frightened—was upon the full run—first looked back when he struck her grandmother—run all the way home. Did not turn her head before the blow was given. Stopped when he struck her. Then he followed witness, and said, “stop her!”—there was nobody in sight—did not follow her to the fence.

After witness got over the fence she stopped and saw Corey go towards the deceased—Dont know when the gun was broken. Expects he went and broke the breech of the gun and put it on her face. The gun was whole when he followed witness—knows it was not broken when she went out of sight.

Head of the bed was the east side—door opens to the west—her grandmother came up the east side of the door, and witness the west side—the first blow knocked her grandmother down—witness saw him give another—then he followed witness.

James Davis—sworn. Benjamin Corey, witness' brother, and himself, had agreed to go fishing on the thirteenth—on his way to Ben. Corey's heard a cry of murder—Called to Ben. and his brother and told them there was a cry of murder on the hill. The three heard the cry and then ran towards Daniel Corey's—got towards the house and met Daniel, west of his house seventy or eighty rods, with the gun barrel in his hand, (same piece presented,) the barrel and his sleeves were bloody. Benjamin asked him what he had been doing—Daniel said "I dont know, what have I?"—He had an old pail on his arm. Benjamin said, "give me this," pointing to the gun barrel, and took it.

They went to the house, supposing he might have killed his dog—the house was open and nothing there—they then went on the path towards Daniel Nash's—found the body—the face was so deformed that they did not know her—Supposed it was his wife. Then went after him towards Ben. Corey's—were afraid he would go down to his brother Ben's and do some mischief. Mr. Bliss, John Davis and Daniel Nash arrived, and all pursued after him.

Got down towards the place where he had been digging his mine—Bliss was behind and said he saw him in the bushes—he skulked in the bushes. They surrounded him—he picked up stones to throw but did not throw them,

When Bliss hallooed, he run—run towards the path to go towards his house.

Cannot say which took hold of him first. Daniel Nash said, "you have killed my mother"—Corey said, I ha'n't, I was crazy"—witness is not positive as to this last.

Nash had the breech of the gun, and said if he attempted to get away he would smite him.

Cross-examined. Daniel Nash's is nearly north of D. Corey's—Ben. Corey's is about south west. The mine about the same direction—nothing but a path to Ben's—land ledgy—fire had run over it.

When they found the body, the head was much broken.

When they met D. Corey, he was in the path going towards his mine—he was walking.

Ben. said to him, "What have you been doing?"—Daniel said, "I dont know, what have I?"—Ben. took hold of the piece of the gun and said, "Give me this, you don't want it"—Daniel gave it up.

When they arrested him, he was about ten or fifteen rods from the same place.

When witness discovered him the second time, he was between

his own house and the mine—was running towards the path. Hung back a little when taken—said he did not want to go.

Appeared to be willing to give up the gun barrel.

Adjourned.

Afternoon.

Silas Davis—sworn.—On the 11th or 12th of June, agreed to go fishing on the 13th. Saturday the 13th went to Ben. Corey's and Ben. and witness went out to dig bait. Before they got to the place saw Daniel H. Corey's two boys coming on the run, who requested them to go and take care of their father or he would kill them.—Asked where the family were, and the boys said they were at Daniel Nash's, and said their father would break up all the *housing-stuff*. The boys were sent off—one to the Selectmen of Sullivan to take care of him.

Heard a cry of murder—run, and when they got within about 30 or 40 rods of the house met D. H. Corey—the gun barrel in his left hand and bloody—his shirt-sleeves bloody—on the other arm a water pail. His brother Ben asked what he had been about. Daniel said, "I don't know, what have I?" Ben took hold of the gun and said, you don't want this—he gave it up willingly.

They then went up to the house—witness forward—door was open—nobody there. Concluded when they took the gun barrel that he had killed his dog.

As they went round the corner discovered the body—head badly mangled—blood and brains scattered on the ground—head broken in, deep enough to contain a boy's arm. Concluded it was his wife. His brother said, "Why in the name of God did they let him do so." Place in the gun stock, presented, was nearly full of blood.

Went in pursuit of him, and as they turned to go, Daniel Nash, Cyrus Bliss, John Davis and a boy came up. They went on by where he was. Bliss being behind discovered him in a little bunch of bushes, right against the place called his mine, eighty or ninety rods from his house. Bliss said, "Here he is." The first witness discovered of him, he was skulking along the bushes to get back to his own house. They got round him—he picked up a stone in each hand—they told him he had better lay them down, they should have him—he did. Ben. and witness took hold of him. Daniel Nash came up behind, laid his hand on his shoulder and said, "What have you been about." Corey said, "I don't know, what have I?" Nash said "You have killed my poor mother, and this is part of the weapon, if you try to get away I'll smite you." Corey said, "I have not, I was crazy."

Cross-examined. Ben. Corey's house is south-west of Daniel H. Corey's—the mine is about half a mile from Daniel's.

When they first met him he was about thirty rods from the mine—was walking towards it. When they saw him the second time he was about five rods from the mine making towards his house.

Betsey Nash—sworn. The old lady was visiting at her house—Mrs. Corey came there with her children and said she had run for her life. Witness asked what the matter was. Mrs. Corey said she did not know—that her husband had kept her and her children confined in the house that forenoon—that he set down on the

threshold of the door—called one of the children to bring him a chair—set a short time—jumped up, put his arm around her neck, and said, "Now we shall always live in peace; now I have conquered; we shall always live happy"—that she said to him, "I guess we shall"—that he went out doors and she set one of the children to watch and see when he was out of sight, and as soon as he was gone she took up her child, and, with her mother, run for her life—that she expected her *housing-stuff* would all be broken up or burned.

Mrs. Corey then said, "Mrs. Nash, don't you want to go up there?" Mrs. Nash said, "No, I'm afraid he'll kill me; won't he?"

Mrs. Nash then got up and prepared to go, and witness said to her girl, Elizabeth, that she might go up with her.

Witness told Mrs. Nash she had better take a bundle of flax, and Corey would think she had come of an errand, and when she went in, to ask where Mrs. Corey was, and then he would not suspect she was gone.

The child was gone but little time.

Cross-examined. Is not able to say why Mrs. Corey said she had run for her life, when he had just said they should live happy.

Cannot say but what Mrs. Corey said something about a letter—cannot say whether then or not.

Mrs. Corey said that she slept with, or went to bed with, her mother the night before, and that Corey had kept them awake all night: she said he would not let them go out: had forbid them to go out: had a cane, or stick, when he said he had conquered: that he stuck the cane into the block of the blades and carried it about. It appears to witness that Mrs. Corey stated he said he was the king of the world, or some great character. She said that after he had carried the block of the blades about he threw it down and said, "We shall now live happy; I have conquered; there will be peace."

Corey has said to witness that he had found a mine; was the richest man alive.

Mrs. Corey said that he went down and got her mother to come up: that she sent for her: that she wanted her to come and stay with her because she was afraid of him: was afraid because he acted so---acted crazy. She said he was crazy.

Witness went and staid there Thursday night.

Re-examined for the State. Mrs. Corey did not state what made him crazy.

Thursday night, when witness was there, he conducted well enough: he went to bed immediately after witness got there: got up and drove away a sheep which came about the door: smoked his pipe: put the sheep in the barn. While he was gone to the barn Mrs. Corey told witness she wanted she should stay all night: that she was afraid to stay alone with him. Mrs. Corey was unwell.

Corey came in and went to bed: talked over his nonsense: said his house was covered with gold leaf; he was the richest man in the world; his farm was covered with gold dust.

Mrs. Corey was sick, and said, "Daniel I shall die, certain." Corey said, "Poor creature, I pity you." He proposed to get up and

take care of her: they told him to lie still and go to sleep; he appeared to sleep.

Witness got up at break of day. Corey waked up and spoke of going to Keene with some of his gold dust; then said, "Oh, my head: how it does ache." Swore violently about his head: then spoke of getting him another wife; said he did not like his old one.

Witness has been there before on such occasions—when called, and when not sent after. Has seen him at other times as at this time—cannot say when—great many times within a year. Cannot tell what produced these turns—some times thought it was rum—some times cider. Cannot say that he ever had such turns except when he had had rum or cider. When not under the influence of these turns, carried on the farm like other men.

Cross-examined again. Does not know that he had drank any thing Thursday evening. Did not see him drink any thing that night. Did not see any rum or cider while there. When he went out to drive the sheep away did not appear to be intoxicated. He said he had drank a little rum that day and should drink a little every day if he could get it.

June 7th,—witness thinks—it was Saturday before this, witness saw him in similar situation.

He had said nothing about his gold mine until that week.

Re-examined again. The Saturday before, 6th, he had been out all night—they sent down for Mr. Nash—witness went up with Mr. Nash. Corey acted crazy, like a drunken man—thought he was drunk—swore roundly at his wife and damned her—swore he would break the drawers. They went out doors—he shut the door—heard a crash, Ben. said he had done something and opened the door. He had taken out a drawer and broke it. Mr. Nash came in—he smiled and held out his hand—they cried out to bind him—bind him—he promised to behave well if they would not bind him—afterwards he broke something else—to appearance he had been drinking—witness did not see him drink any thing.

Cross-examined again. Does not know there was any rum there—there was no cider—he acted like a man crazy with liquor—it was before breakfast. Walked out to his field: walked as well as men in general: set down in the field by the side of a stump.

Don't know but he had been on good terms with his wife. He had before this Saturday treated his wife and children kindly.

Had never heard of any difficulty between him and the deceased.

Re-examined. He always spited his wife in these scrapes.

Cross-examined. Has heard him use abusive language to his wife before.

Dr. Timothy L. Lane—sworn.

The counsel for the Government proposed to show by this witness that he had examined the wound, and that it was of a nature to produce death; but the Court said the testimony was unnecessary, that such a wound as the witnesses described would necessarily produce death—*Not examined.*

The case was here rested on the part of the prosecution.

MR. PARKER addressed the jury. He said he rose with no ordinary emotions to open the defence on behalf of the prisoner.

It was a case out of the usual routine of professional business—one of a description to which he had hitherto been a stranger—one of no common importance, pressing upon the mind with considerations of unusual solemnity.

It was a case, too, of the first impression in the County. The crowd, by which they were surrounded, had been attracted and gathered to listen to no details of broken promises, however aggravated—to no invasion of the rights of property, however enormous.

The throng around them indicated the momentous nature of the subject under consideration. The deep interest manifested would tell them, if the indictment had not already done it, that a citizen had been set to the bar of the highest judicial tribunal in the State, and that the Government under which he lived was demanding his life.

Whatever then might be the evidence—whatever might be the result—However confident the prisoner's counsel might be of a verdict in his behalf—the proceedings, until that final result arrived, would be characterized by the solemn consideration, that the life of a citizen was on trial before them.

Under such circumstances, said he, a most solemn duty is imposed on us all,—On the Witnesses, that they not only say nothing willfully false, but that they do not lightly and unadvisedly say that which they merely surmise, but do not know to be true—On the Counsel, that they endeavor to present the case fairly before the jury, and do and consent to nothing by which the life of man may be taken or jeopardized contrary to the law of the land—On the Court, that they carefully hold the scales of justice according to the rules of the criminal law, and so far act as counsel for the prisoner, as to secure to him all his legal rights—and it in some measure relieved those assigned to his defence from the sensation of responsibility resting on them, to know that this duty would always be faithfully performed.

But, he said, the most solemn duty of all rested upon the Jury. They were by law constituted the judges of the law as well as the fact in this case, and after the duties of others had been performed, so far as they were able to perform them, the prisoner would be left with the jury to determine on the whole matter, and to decide his ultimate fate.

They were not only to decide his fate for this world, and to determine whether space and time and preparation to the natural limit of life should be granted him, but they

were, (he spoke it with no irreverence) so far as this case was concerned, the Grand Jury of Heaven, and were to pass upon the question whether they would present the prisoner at the bar of God, *accused*, so far as earth could accuse him, of the crime of *murder*.

He need not say to them, then, that it was essentially important that they should exercise the utmost caution, and that they should not only form no opinions, but that they should imbibe no impressions against the prisoner, but upon the most clear, substantial and undoubted evidence.

Prisoners, he said, in all cases, necessarily came upon trial under circumstances of disadvantage. The adversary with whom they had to contend, was the Government itself, and the whole weight of the body politic—the whole consequence of the State, was in array against them.

The very accusation, too, was calculated to produce an impression unfavorable to the accused. We were too prone to suspect guilt merely because it was formally alleged that it existed.

But the prisoner at the bar came before them under other circumstances of disadvantage. Those to which he alluded were perhaps common to many prisoners, but they had not the less tendency to prevent a fair and impartial trial according to law.

There was a great propensity among mankind, generally, to make subjects of this nature matters of discussion and opinion, even during the pendency of a prosecution; and while the prisoner was immured in a dungeon, and before he had an opportunity to be heard in his defence, he often had applied to him the epithets and character which a legal conviction alone ought to give.

He knew not how the fact was, but probably they had heard this prisoner termed “a murderer”—recklessly, heedlessly termed so by persons who had no knowledge of the facts in the case. Nay more, an account of his arrest and examination was at the time published forth to the world, in one of the newspapers printed in the town, in a manner calculated to excite the publick mind—bearing the imposing prefix, in capitals, of “MURDER”—representing that “the head of the victim was horribly mangled,” and that “during the examination he was silent, and much of the time apparently inattentive.”

These things had gone forth without the attendant explanations which ought to have accompanied them; shewing why, and wherefore, he was thus inattentive and careless, and they might probably have reached some of the jury.

Such circumstances were perhaps not singular in the

annals of the world, but they were most manifestly calculated to produce a prejudgment of the prisoner's case, and if he spoke of them in no terms of unmeasured reprobation, it was because he hoped and believed it was not the intention of the individuals concerned, to affect the trial of the prisoner—because he believed they denominated this transaction a *murder*, with no malice aforethought, on their part; and he would not mete out to them the measure which they had, unwittingly, he presumed, measured out to his client.

If, however, moved by newspaper paragraphs, or by any epithet indicative of crime which they might have heard applied to the prisoner, the jury were to come there with opinions made up that he was guilty, this trial would be a mere solemn mockery—the shadow of justice without its substance. They would not, they could not, try the prisoner on the law and the evidence, but he would be already condemned without evidence and against law, and they, instead of acting as the country on which he had put himself for trial, would be ministerial agents, binding and conducting him to the place of execution.

But, he said, he did not fear this. There was, however, another effect which such paragraphs and such rumours might have, from which it became him to ask them to guard themselves, even from themselves. The human mind was so constituted, that it sometimes received impressions, we knew not how, at times when we were not ourselves aware of the impressions we imbibed, and we were operated upon by external circumstances, even unconsciously.

Could he fear any thing for his client in this case, it would be that the circumstances to which he had alluded, might have given to some of their minds an imperceptible bias—a bias unacknowledged and unknown, even to their own hearts—which would lead them, contrary to their intention, and even against their determination, to give an undue weight to the evidence against the prisoner, and to weigh too lightly that produced on his behalf.

It was not with the slightest disrespect to any or either of them, but in the performance of a most solemn duty which he owed his client, that he asked them to guard themselves firmly and resolutely against any influence of this nature—to watch with more than ordinary solicitude, that accusation be not substituted for proof, or suspicion for certainty.

The law required at their hands, that they should set out with the presumption of the innocence of the prisoner, and that they should not yield that presumption, unless,

upon the whole evidence in the case, all reasonable doubts were removed from their minds. He read from *Mac Nally's Evidence*, Vol. 1, Chap. 1, Rule 2d.

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

"Sir EDWARD COKE, *in favor of life* exhorts juries not to give their verdict against a prisoner, without plain, direct, and manifest proof of his guilt, which implies, that where there is doubt, the consequence should be acquittal of the party on trial. 1 *Mac Nally*, p. 2.

"Therefore, whenever the evidence warrants the observation, the judges consider it an indispensable duty, in charging the jury, to remind them, that as they are entrusted with the administration of public justice on the one hand, and with the life, the honor and the property of the prisoner on the other, their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves whether they are satisfied, beyond the probability of doubt, that he is guilty of the charge alleged against him in the indictment. *Ditto*, p. 3.

"And however strongly you may suspect the prisoner, yet it were better that one hundred guilty persons should escape than make a precedent by which one innocent man might be found guilty upon such testimony. *Ditto*, p. 4.

"But I will go further, and say, that if you have a *doubt* upon that question; if your minds be in a state of *oscillation*, you ought in that case to acquit the prisoner; because to justify a verdict of conviction to yourselves and to your country, the evidence upon which you decide should be above exception, and not evidence upon which you entertain any doubt." *Ditto*, p. 5.

He should ask them, then, to bear in mind, throughout this whole case, that the law, while it accused the prisoner, allowed no presumptions to be made of his guilt—that it held it better that many guilty persons should escape than that one innocent one should suffer—that the prisoner was at all times to be presumed innocent until the evidence adduced should prove him guilty—and that the evidence which alone would authorize them to convict, must be such as convinced them beyond all reasonable doubt of the prisoner's guilt—that so long as a reasonable doubt remained in their minds, whether the prisoner had committed the crime, that doubt was to be thrown into the prisoner's scale, the scale of mercy—and he was in such case to be acquitted.

It was only by thus doing, that they could fulfil the obligations imposed by the oath they had taken, and acquit themselves faithfully to the law—to their consciences—and in the judgment of that higher tribunal, where we shall all hereafter be arraigned for our own trials, on the law and the evidence, as they shall relate to us.

What, then, was the offence of which the prisoner stood accused? What were the necessary ingredients which constituted the crime of murder, as laid down in the books?

"Murder is therefore now thus defined or rather described by Sir Edward Coke.

"When a person, of sound memory and discretion, unlawfully killeth any reasonable creature, in being and under the king's peace, with malice aforethought either express or implied. 4 *Black. Com.* 195.

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

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

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

The jury would observe, that in order to make the killing of any person a murder, it was necessary that the agent, the party who did the act, should be a person of sound memory and discretion, and that the killing should be done with malice aforethought.

If this case, then, were to rest on the proof adduced by the government, he should contend that the prisoner could not be found guilty of murder, because there was no malice—that the absence of all motive to induce the prisoner to kill the deceased, with the other circumstances attending the transaction, were such as completely to negative the idea of malice. That for this reason—on the ground of want of malice alone, the prisoner could be convicted of manslaughter only. To show the nature of this offence he would read from the authorities on that subject.

"Murder and manslaughter differ not in the kind or nature of the offence, but only in the degree; the former being the killing of a man of malice prepense, the latter upon a sudden provocation or falling out.

"And therefore it is, that upon an indictment for murder, the party offending may be acquitted of murder, and yet be found guilty of manslaughter, as daily experience witnesseth, and they may not find him generally not guilty, if guilty of manslaughter. 1 *Hale's Pleas of the Crown*, 449.

"The difference between the offences of murder and manslaughter, seems to rest in these particulars.—In the degree and quality of the offence, for murder, as hath been said, is accompanied with malice aforethought, either express or presumed, but bare homicide is upon a sudden provocation or falling out. The indictment for murder essentially requires these words, *feloniously of his malice aforethought killed and murdered*, but the indictment of simple homicide is only *feloniously killed*. *Ditto*, 450.

"Manslaughter, or simple homicide, is the voluntary killing of another without malice express or implied, and differs not in the substance of the fact from murder, but only differs in these ensuing circumstances. 1, In the degree of the offence, murder being aggravated with malice express or implied, but manslaughter not, therefore in manslaughter, there can be no accessaries before." "2, In the form of the indictment, &c. *Ditto*, 466.

"Manslaughter, which is principally distinguishable from murder in this, that although the act which occasions the death be unlawful, or likely to be attended with bodily mischief, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter, and the

act being imputed to the infirmity of human nature, the correction ordained for it is proportionably lenient. 1 *East's Crown Law*, 218.

"*Manslaughter* is, therefore, thus defined, the unlawful killing of another, without malice express or implied; which may be either voluntarily, upon a sudden heat; or involuntary, but in the commission of some unlawful act. 4 *Black. Com.* 190.

"But if the cause be but sudden passion overstepping its bounds, correction well intended, though too severe, a sudden fury, blind, though fatal, the law reduces the crime to manslaughter." 2 *Chitty's Cr. L.* 485.

The jury had thus seen that the essential difference between murder and manslaughter, consisted in the fact, whether the killing was with malice aforethought—premeditated malice—or whether it was occasioned by sudden fury, without malice. If the first, it was murder—if the last, only manslaughter.

But in order to constitute any killing, either the one or the other, the agent, the party killing, must be, to use the language of the law, "*of sound memory and discretion.*"

If otherwise, no offence had been committed. The authorities were express on this subject.

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

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

"*The agent must be of sound memory and discretion.* But this is no other than is necessary to constitute any indictable offence. 2 *Chitty's Cr. L.* 476.

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

The Counsel for the prisoner, were it important, would contend that sufficient was already drawn from the witnesses for the government, not merely to raise the strongest doubts as to the soundness of the prisoner's mind, but to impel most irresistibly to the conclusion that he was insane.

The absence of all motive on the part of the prisoner to commit such an offence—the transactions of the morning previous—his declaration that they should live happy because he had *conquered*—the flying of his wife just after the kindest expressions of affection from him—his conduct after the deed—returning, breaking his gun and leaving part upon the head of the deceased—deliberately walking off towards a customary resort, his mine, of which the jury would hear more—His conduct when met—giving up the

gun-barrel and pursuing his route quietly—the circumstance that they were afraid he would do mischief at his brother's—his making no attempt to escape—but when pursued endeavoring to regain the path which led to his own house—these, with other circumstances already in testimony, led to a most violent presumption of decided derangement.

But, he thanked Heaven, the law which anciently prevailed in England, by which a prisoner on trial for a criminal offence was precluded from producing witnesses in his behalf, and which bound him to stand or fall by the evidence which the government saw fit to produce against him, had long since become obsolete in that country, and had never, to his knowledge, been a stain upon the judicial proceedings of this.

The accused was not bound to rely, for the proof of his innocence, on the very evidence which the government pleased to introduce to show his guilt. The 15th Article of the Bill of Rights had made provision, that “every subject shall have a right to produce all proofs that may be favourable to himself; to meet the witnesses against him face to face; and to be fully heard in his defence by himself and counsel.” It was a provision, on the faith of which we all reposed, as our security against false, or mistaken and unfounded accusation.

The defence, then, which the prisoner's counsel would support by farther proof, was, that at the time of the committing of this act, the prisoner was not only actuated by no malice, but that he was acting under the delusions of Insanity—that the death of the deceased occurred in consequence of this derangement and delusion, and the prisoner was, therefore, neither legally or morally accountable as the agent.

It might, perhaps, be useful to inquire into some of the causes, indications, and characteristic of Insanity, and for this purpose he would read from *Rees' Cyclopaedia*, Article, “Mental Derangement.”

“Authors who have treated on the subject of mental derangement, have commonly been desirous of affording a definition; they have endeavoured to compress in few words, or a short sentence, the prominent and discriminating phenomena of insanity, and thus to establish an essential character of the disorder. However meritorious their labours, their success has been by no means proportionate to their exertions. They have all fundamentally differed; and to enumerate their attempts is only to record their failures. Doct. Mead conjectures, “that this disease consists entirely in the strength of imagination.” “Insanity,” says Doct. Cullen, “consists in such false conceptions of the relations of things as lead to irrational emotions or actions. Melancholy is partial insanity, without indigestion; mania is universal insanity.” Doct. Ferriar, adopting the generally accepted division of insanity into mania and melancholia, conceives in mania, *false perception*, and consequently confusion of ideas, to be a leading circumstance. Melancholia he supposes to consist in *intensity of idea*, which is a contrary

state to false perception. Doct. Arnold observes, that "insanity as well as delirium, may be considered as divisible into two kinds; one of which may be called *ideal* and the other *notional insanity*."

"*Ideal insanity* is that state of the mind, in which a person imagines he sees, hears, or otherwise perceives, or converses with persons or things, which either have no external existence to his senses at the time, or have no such external existences, as they are then conceived to have; or if he perceives external objects as they really exist, has yet erroneous and absurd ideas of his own form and other sensible qualities; such a state of mind continuing for a considerable time, and being unaccompanied with any violent or adequate degree of fever."

"*Notional insanity* is that state of mind, in which a person sees, hears, or otherwise perceives external objects, as they really exist, as objects of sense; yet conceives such notions of the powers, properties, designs, state, destination, importance, manner of existence, or the like, of things and persons, of himself and others, as appear obviously, and often grossly erroneous, or unreasonable to the sense of the sober and judicious part of mankind. It is of considerable duration; is never accompanied with any great degree of fever, and very often with no fever at all.

"*Symptoms*—The approaches of insanity have been variously related by different writers. The late Doct. John Monroe, in a pointed and elegant reply to Doct. Battie's Treatise on Madness, has remarked that high spirits, as they are generally termed, are the first symptoms of this kind of disorder; these excite a man to take a larger quantity of wine than usual; (for those who have fallen under my observation, in this particular, have been naturally very sober;) and the person thus affected, from being abstemious, reserved, and modest, shall become quite the contrary; drink freely, talk boldly, obscenely, swear, sit up till midnight, sleep little, rise suddenly from bed, go out a hunting, return again immediately, set all his servants to work, and employ five times the number that is necessary; in short, every thing he does or says betrays the most violent agitation of mind, which it is not in his power to correct; and yet in the midst of all this hurry, he will not misplace one word, or give the least reason for any one to think he *imagines* things to exist that really do not, or that they appear to him different from what they do to other people. They who see him but seldom, admire his vivacity, are pleased with his sallies of wit, and the sagacity of his remarks; nay, his own family are with difficulty persuaded to take proper care of him, until it becomes absolutely necessary, from the apparent ruin of his health and fortune."

"In many instances pain of the head and throbbing of its arteries precede an attack of insanity; sometimes giddiness and confused vision are complained of as precursory symptoms.

"Mr. Haslam, whose situation in Bethlem Hospital affords abundant opportunities of observing this disorder, has thus related the commencement of madness and melancholy. "On the approach of mania, they first become uneasy, are incapable of confining their attention, and neglect any employment to which they have been accustomed. They get but little sleep, they are loquacious and are disposed to harangue and decide promptly and positively upon every subject that may be started. Soon after, they are divested of all restraint in the declaration of their opinions of those with whom they are acquainted. Their friendships are expressed with fervency and extravagance, their enmities with intolerance and disgust. They now become impatient of contradiction, and scorn reproof. For supposed injuries, they are inclined to quarrel and fight with those about them. They have all the appearance of persons inebriated; and those, who are unacquainted with the symptoms of approaching mania, generally suppose them to be in a state of intoxication. At length suspicion creeps upon the mind, they are aware of plots which had never been contrived, and detect motives that were never entertained. At last, the succession of ideas are too rapid to be examined, the mind becomes crowded with thoughts, and confusion ensues. Those under the influence of the depressing passions will exhibit a different train of symptoms. The countenance wears an anxious and gloomy aspect; and they are little disposed to speak. They retire from the company of those with whom they formerly associated; seclude themselves in obscure places, or lie in bed the greater part of their time.

Frequently they will keep their eyes fixed to some object for hours together, or continue them an equal time, 'bent on vacuity.' They next become fearful, and conceive a thousand fancies."

Causes.—"In the investigation of the causes of mental derangement, there is obviously much uncertainty: our knowledge of the human mind is too limited, to affirm that particular states of the intellect will be the necessary result of certain circumstances preceding. Those who have attentively considered this subject, have divided the causes of insanity into *physical* and *moral*. Under the head of physical causes, hereditary disposition has been stated very generally to prevail; whereby the offspring of an insane parent or parents will, most probably, become similarly affected.——'Injuries to the head, from external violence.'

"The moral causes, include those emotions, which are conceived to originate from the mind itself, and which, from their excess, tend to distort the natural feelings, or, from their repeated accessions, and unrestrained indulgence, at length overthrow the barriers of reason and established opinion.

It was not necessary to entitle them to support this defence for the prisoner, that they should show that he was a person utterly devoid of understanding—should show him to have been an Idiot. Nor was it necessary to show his insanity to have been a permanent and continuing derangement.

He would read again from *Hale's Pleas of the Crown*. The author, after treating of idiocy or natural madness next considers.

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

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

"Again, this accidental *dementia*, whether total or partial, is distinguished into that which is permanent or fixed, and that which is interpolated, and by certain periods and vicissitudes; the former, is phrenesis or madness; the latter, is that which is usually called *lunacy*, for the moon hath a great influence in all diseases of the brain, especially in this kind of *dementia*: such persons, commonly, in the full and change of the moon, especially about the equinoxes and summer solstice, are usually in the height of their distemper; and therefore crimes committed by them, in such their distempers, are under the same judgement as those whereof we have spoken, namely, according to the measure or degree of their distemper; the person that is absolutely mad, for a day, killing a man in that distemper, is equally not guilty, as if he were mad without intermission.

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

reason, they cannot be guilty, ordinarily, of capital offences, for they have not the use of understanding, and act not as reasonable creatures, but their actions are, in effect, in the condition of brutes. *Ditto*, 31.

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

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

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

"In the year 1668, at Aylesbury, a married woman of good reputation, being delivered of a child, and not having slept for many nights, fell into a temporary phrenzy, and killed her infant in the absence of any company; but company coming in, she told them she had killed her infant and there it lay; she was brought to gaol presently, and, after some sleep, she recovered her understanding, but marvelled how, or why, she came thither. She was indicted for murder, and upon the trial, the whole matter appearing, it was left to the jury, with this direction—'That, if it did appear that she had any use of reason, when she did it, they were to find her guilty; but if they found her under a phrenzy, tho' by reason of her late delivery and want of sleep, they should acquit her; that had there been any occasion to move her to this fact, as to hide her shame, which is ordinarily the case, of such as are delivered of bastard children, and destroy them; or if there had been jealousy in her husband, that the child was none of his; or if she had hid the infant, or denied the fact, there had been evidence that the phrenzy was counterfeit; but none of these appearing, and the honesty and virtuous deportment of the woman, in her health, being known to the jury, and many circumstances of insanity appearing, the jury found her not guilty, to the satisfaction of all that heard it.'" *Ditto*, 35, 36.

Nor was it necessary for the prisoner's counsel to show him to be, or to have been, insane, in relation to all subjects.

But it was sufficient to entitle him to an acquittal, that at the time when the act was done, he was in a state of mental alienation, in relation to some subjects, and that he was acting under that influence.

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

The jury, he said, were probably not now, for the first

time, to learn that Insanity assumes the most incomprehensible modes and forms—that it not only exists at times, and disappears, and again returns, but that it exists, either permanently or at intervals, in relation to particular subjects, and that the delusion is most perfect and complete, in relation to them, while the unhappy victim of its influence is sane and discreet on all others.

He could not better give the law and the fact on this branch of the case, than by reading from the celebrated speech of Lord Erskine, on the trial of James Hadfield, in 1800.

Hadfield was indicted for high treason, in shooting at the King, in Drury Lane theatre, and acquitted on the defence of Insanity.

“It is agreed by all jurists,” said Lord Erskine, “and is established by the law of this, and every other country, that it is the Reason of man which makes him accountable for his actions; and that the deprivation of reason acquits him of crime. This principle is indisputable; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace, with accuracy, the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which indeed, so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subject of legal consideration and judgment.”

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

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

“The Attorney General, standing, undoubtedly, upon the most revered authorities of the law, has laid it down, that to protect a man from *criminal responsibility*, there must be a *total deprivation of memory and understanding*. I admit that this is the very expression used, both by Lord Coke and by Lord Hale; but the true interpretation of it, deserves the utmost attention and consideration of the court. If a *total deprivation of memory* was intended by these great lawyers to be taken in the *literal* sense of the words:—if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name, nor his condition, nor his relation towards others—that if a husband, he should not know he was married; or if a father, could not remember that he had children; nor know the road to his house nor his property in it—then no such madness ever existed in the world.

It is *idiocy* alone, which places a man in this helpless condition ; where, from an original mal-organization, there is the human frame alone, without the human capacity ; and which, indeed, meets the very definition of Lord Hale himself, when, referring to Fitzherbert, he says ; ‘ Idiocy or fatuity, *a nativitate vel dementia naturalis*, is such an one as described by Fitzherbert, who knows not to tell twenty shillings, nor knows his own age, or who was his father. But in all the cases which have filled Westminster Hall, with the most complicated considerations—the lunatics, and other insane persons, who have been the subjects of them, have not only had memory, in my sense of the expression—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought ;—all their deductions within the scope of the malady, being founded upon the *immoveable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by fancy, as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy ; these unhappy sufferers, however, are not so much considered, by physicians, as maniacs ; but to be in a state of delirium as from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, but driven wholly from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects ; or, at least, are wholly incapable of considering their relations. Such persons, and *such persons alone* (except idiots) are *wholly deprived of their understandings*, in the Attorney General’s seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, Reason is not driven from her seat, but distraction sits down upon it along with her, holds her, trembling, upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense ; in such cases the images frequently vary, but in the same subject are generally of the same terrific character. Here too, no judicial difficulties can present themselves ; for who could balance upon the judgment to be pronounced in cases of such extreme disease ? Another class, branching out into almost infinite subdivisions, under which indeed the former, and every other case of insanity may be classed, is, where the delusions are not of that frightful character—but infinitely various and often extremely circumscribed ;—Yet where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact : and these are the cases which frequently mock the wisdom of the wisest in judicial trials ; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind : their conclusions are just, and frequently profound ; but the premises from which they reason, when within the range of the malady, are uniformly false :—not false from any defect of knowledge or judgment ; but because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.”

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

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

“ I well remember, (indeed I never can forget it,) that since the noble and learned Judge has presided in this Court, I examined, for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad house, at Hoxton, for having

imprisoned him as a lunatic ; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact ; but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemployed which long experience dictated ; but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and Jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression ; at last, Dr. Sims came into Court, who had been prevented, by business, from an earlier attendance ; from him I soon learned that the very man whom I had been above an hour examining, and with every possible effort which Counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of mankind* ; not merely at the time of his confinement, which was alone necessary for my defence ; but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, "I am the Christ ;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady ; I could consume the day if I were to enumerate them ; but there is one so extremely remarkable that I cannot help stating it."

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

"But it is said, that whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil*. I think I can presently convince you, that there is something too general in this mode of considering the subject ; and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the Attorney General in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or inanimate being, (and such cases have existed,) and that upon the trial of such a lunatic for murder, you firmly upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed, to have been a potter's vessel ; that it was quite impossible to doubt that fact, although to all other intents and purposes he was sane ; conversing, reasoning, and acting, as men not in any manner tainted with insanity, converse, and reason and conduct themselves ; suppose farther, that he believed the man whom he de-

stroyed, but whom he destroyed as a potter's vessel, to be the property of another ; and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil ; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being ?”
1 Erskine's Speeches, 499, et seq.

If, then, the Insanity of the prisoner had not existed at all times, and if it had not extended to all subjects so as to produce absolute fatuity—still, if he was insane on some subjects—at the time the deed was done, and if he was acting under the delusions of such frenzy, he was not accountable, and was entitled to an acquittal.

In thus laying before them the general nature of the defence, he had performed, imperfectly, the principal duty assigned to him on this occasion. He should be followed by learned counsel, more competent to do justice to the defence, who would state to them the particular proofs to be introduced, and sum up the evidence and the law on the part of the respondent.

MR. HUBBARD, followed in the defence. He said, that before stating to the jury the facts which were expected to be proved, he would notice a remark which fell from the counsel who opened the case on the part of the government. It was true, that we lived in a land where the rights and privileges of all were alike respected—that we lived, most emphatically, under a government, not of men, but of laws, and these truths greatly encouraged the friends of the prisoner on this trial—they went far to satisfy them, that however low might have been the condition in life of the unfortunate individual at the bar, yet his rights *would be regarded*. And notwithstanding the great power arrayed against him—notwithstanding the inequality of the contending parties—yet, to the friends of the prisoner, it was matter of joy, that, under the operation of our laws, justice would assuredly be meted out without respect to any.

To the high encomiums which the gentleman who opened this case had bestowed upon our civil institutions—upon the equal rights and privileges of our citizens, he most cheerfully subscribed. No man could entertain a higher respect for our political and civil institutions than he did—no man could be more sensible to the value of the rights and immunities of our citizens—and when he said all this, he could not but feel a deep conviction that the result of this very trial would be a signal proof of the truth of his remarks—that it would be a *triumph of law over prejudice*—

of reason over passion. The feelings which his worthy brother, who opened this discussion exhibited, did great credit to the sensibility of his heart—but deeply as we all deplored the happening of the event which had brought us together on this solemn occasion—yet here the jury, and all of us were bound so to restrain and control the influence of our feelings, that we might do our respective duties without fear and without favor, and as the law and the testimony should approve.

The jury, he said, had already been informed that the defence of the unhappy man at the bar would be made on the ground of his Insanity, at the time the act was committed. It now devolved on him to state to them the particular circumstances which would be shown by the testimony, going to establish the fact of his Insanity.

It was truly an occasion of deep interest to this unfortunate man, an occasion of intense anxiety to his wife, to his children, and his friends—and on an occasion of such importance, the jurors should not only hear the testimony from the mouths of the witnesses, but it was peculiarly proper and fit that he should state before them, succinctly, what would be the evidence which would be offered, that he should give the jury a full view of the defence which we had felt it our bounden and most solemn duty to make for the prisoner.

I say *we*, said Mr. H., because it is a truth that every attempt of his counsel to get information from him, in relation to this affair, has been without any success. To us he has never given any evidence of sanity—and we should have been unfaithful to ourselves, untrue to the cause and the community, if we had neglected to prepare this defence, and to shew to the court and to the jury, that the prisoner himself was unconscious of the act—and was now wholly indifferent to, and insensible of, the consequences.

The counsel for the prisoner, he said, did not deny that the life of Matilda Nash had been taken away by the physical power—by the personal act of the prisoner. The eye of Omnipresence had seen the act. The Searcher of all hearts knew the motive—and if it had been knowingly done, an infinite God of truth would surely punish hereafter, this violation of his decalogue. We must judge of the character of this transaction from circumstances, and from a variety of facts shewn to us by human testimony, and it would be the duty of the jury to say, on their oaths, whether this man had done this act in the exercise of that reason which was given for our guide here—or whether it was committed at a moment when reason had lost her

control, and madness had usurped her dominion over the actions of this unfortunate man. It was reason which made man accountable to his God and his fellow men.

Without further remark, he would now proceed to state to them what evidence would be offered in behalf of the prisoner, and if he was not deceived as to the character of the testimony, he could not, for a moment, doubt, that after the jury should have heard the whole, they would say, by their verdict, that the prisoner was not amenable to the law for the act he had committed—although he had taken the life of a rational being.

His counsel would attempt to show them that the father of this unfortunate man, for many years, had been deranged; that a sister, also, for a number of years had been suffering from partial delirium. That from the operation of physical causes, there existed, on the part of the prisoner, a predisposition to insanity. From some peculiar mal-organization of the mind, insanity was often produced without our being able to trace the effect to any direct adequate cause. It was known, however, to be constitutional—it was a calamity visiting some of the human family from one generation to another. It seemed to be hereditary, and from a number of witnesses they should endeavor to establish this hereditary disposition to insanity on the part of the prisoner.

It would appear that some years ago the father of the prisoner became deranged, and since that period has suffered almost an entire alienation of mind. He imagines that his own species are his worst enemies—that they are seeking his life. He talks but little, inclines to lay abed, and exhibits every indication of derangement. Very similar notions would be shown to have existed in the present case.

It would be in evidence that the sister became deranged about six years ago—that the most gloomy forebodings have filled her mind—that she secretes herself—acts as though she was continually in fear that some calamity was to befall her—has attempted to destroy her own life—and her conduct evinces that distraction has set down by the side of her reason and has assumed her dominion.

It would be shown by a number of witnesses, that many years since this unfortunate man was visited with fits of epilepsy; and that their tendency is to produce mental alienation.

It would be shown, that the prisoner had suffered a number of severe accidental falls upon the ice, and one from his horse—that these falls were upon his head—that after he complained of extreme and distressing pains in

his head, and that their tendency was to produce that derangement of mind which existed at the time the act, we all lament, was committed.

It would be shown to them, that after the happening of the fits, also, he made great complaints of his head, and that such were his frequent representations about the sensations in his head many years before the happening of this event, that there was no room to doubt that sufficient cause had occurred to produce partial delirium.

It would be shown, that the prisoner was a hard working and labouring man and that the great exertion and bodily labour of the prisoner tended to produce these paroxysms, and pains in the head, and it would appear that immediately before the event took place the prisoner had made great bodily exertions.

They should show the jury, by the most conclusive evidence, that such were the acts and declarations of the prisoner for more than two weeks before the killing took place, that he could not have been of sane mind during that time—That previous to the eighth of June he left his wood, where he had been hard at work, representing that he had been shot at by an air gun—that he had heard the ball whistle by his ears—and that his life was sought after—and his fears were so excited that he would not return to that wood again to labour.

They should show that he represented that he had been thrown from a log in his wood—that he fell on his head—and that he said the devil was attempting to kill him.

That about the same time, on discovering a bumble bee fly into the window it appeared to distress him, and he declared it to be a spirit which had come to carry him to hell.

It would be shown to the jury, that he represented he had discovered a mine of gold and silver—that he dug a hole in the ground five feet in length, and two feet deep, which was his mine—that he said the gold had extended over his farm, his buildings, his wood-yard, and was getting on to his neighbor's land. That this mine contained his guardian angel—his protecting spirit; that he called his brother and his brother's wife to go and see it, carried the sand in his pocket and exhibited it to his neighbors, saying that he was the richest man in the world—that he was to be crowned king of America, and his wife queen. That at another time, he called his son to aid him in carrying boards to cover up his mine which contained his angel, which was done.

They should offer evidence, that at another time he rep-

resented that his wife had procured twelve men from Walpole to kill him—that they had attacked him with their guns but did not fire, because his angel would not let them.

It would be shown by the evidence, that at another time he imagined himself called upon to preach the Gospel to the Heathen in the North-East—lamented that he must be separated from his family—but said that he must go—he could not be happy until he had fulfilled this commission.

That on Monday, the 8th of June, while at work, he declared to Mr. Guillow's son that the country was at war, that the British had attacked the Americans, and that every man must fight, and enquired of him if he had not seen strange sights, and heard singular noises.

It would appear, that on Tuesday, the 9th, he dug in his mine, and was very wild—that on Wednesday, he made some of the neighbors go and see it—sung loud and in strains without sense or meaning, and was extremely wild and irrational—that on Thursday, he roved about from one place to another without any business, filled with the most extravagant ideas about his gold and his wealth—that on Friday, Mr. Guillow came to bleed him, but forgot his lancet, that he was then so deranged, so wild, so lost, that Guillow wrote a letter, which the prisoner's wife signed, directed to the Selectmen of the town, giving them information of his then state, and requesting them to take care of him, on account of his derangement.

This was no conjuration, but it was a reality—it was plain matter of fact, done the day before the killing—Mr. Guillow could not be mistaken. The events of Friday night, which the prisoner passed without sleep, would show that he was not mistaken—and the events of Saturday morning before the act was done would most clearly show he was right. The letter, however, did not reach the Selectmen in season.

It would appear in evidence, that on Friday, among other things, he represented that his wife was crazy—That on Saturday morning he rose early—walked about hastily—sung clamorously—and what followed the events of the morning had been stated by the witnesses for the government.

There were other notions equally extravagant with those he had detailed—that infernal spirits were besetting—that witches and devils were meditating his destruction; and there were other acts of the prisoner, equally strange, to which he had not been able to allude, but which would be in proof, all showing the ravings of a maniac, and not the exercises of a rational being.

It would appear that these things were not occasioned by intemperance—that they took place when he was not in liquor—that they were the phantoms of a bewildered imagination—the vagaries of an individual, suffering from alienation of mind.

If these circumstances and facts should leave any doubt as to the prisoner's insanity at the time the act was committed, he would refer them, in connexion with all the other circumstances, to the act itself, as clear and full evidence that he was deranged.

Towards the deceased he had no malice in his heart, they had long lived together on terms of friendly intimacy in the same neighborhood—they were members of the same religious society, and no unkind sentiment, nor an unfriendly feeling towards this woman ever entered the mind, or influenced the heart of this unfortunate man. Mrs. Nash was the last being on earth whom he would knowingly have injured, the act done to her was the act of a maniac, and could not have been the act of Corey in his right mind.

He would simply remark, in conclusion, that if all the circumstances to which he had called their attention, and which would be offered in evidence, should fail to satisfy them, or to raise a reasonable doubt of the prisoner's insanity, he must abide the consequences—but otherwise it would be the bounden duty of the jury to discharge him from this prosecution.

Adjourned.

Tuesday Morning.

The counsel for the prisoner observed, that, as the evidence in the defence went to several points, they proposed, so far as they could conveniently, to put in all the evidence to each point, separately. It would render it necessary for them to call some of their witnesses several times, but would perhaps be more convenient on the whole—to which the court assented.

MR. HUBBARD, proceeded to call the witnesses.

Benjamin Corey—sworn. Is a brother of the prisoner—Has lived about half a mile from him.

Witness was asked if his father was sane.

The Solicitor, objected to the question, and cited, *Poole and a. vs. Richardson*, 3 *Mass.* 330, and other authorities, to show that the opinion of the witness could not be received in evidence.

The prisoner's Counsel, replied that they did not rely on any opinion—they expected to prove the facts showing his insanity.

*The witness proceeded—*His father is crazy—Three or four years ago they could not get him to go to bed—he would stand up for hours, night after night, as if amazed—would not speak—witness has often set up with him, till twelve o'clock—It began seven years ago—He swears, which he did not before—Does not go out—Is

not very well, but is not lame—Now goes to bed between twelve and one o'clock in the afternoon—Is afraid of the neighbors—Sometimes, when neighbors whom he best liked, come in sight, he exclaims, "the devil is coming"—Never knew or heard of his being intoxicated—Does not appear to wish to talk to the neighbors, but avoids them.

Witness' sister, resides in his family—is about twenty eight years of age—About six years ago, minded that something ailed her—did not act as she used to do—Has her ups and downs—is wild as a hawk—have to catch and hold her—threw a snow ball through the windows—avoids the neighbors—used to be sociable before—was a good girl, and good to work—dont work now—Run away, a year ago last fall—They had a master hunt after her—found her at Stoddard, at Capt. Phelps', a place where she had not been before—She was at work, and going to stay there—Have to watch her when wild.

Cross-examined. Is seven years last March, since his mother died—His father had conveyed his property to him, long previous—His father had been unwell, previous to his mother's death—did nothing for some time previous—He does act crazy, at other times than when the neighbors are there—Swears, at other times than when witness is giving away cider or spirit—He exclaims, "the devil is coming," when the neighbors are going by—Was always steady, industrious, and attentive to business, until about the time of the death of his wife.

Thinks it is more than a year, that he has gone to bed between twelve and one o'clock—two years, may be—lies until the next morning.

It was about five years ago, that they had trouble in getting him to go to bed.

[Asked, repeatedly, if he did not first say, that it was three or four years ago that he could not get his father to go to bed—answered, after much hesitation, that he could not tell the exact time.]

To a question by the Court. Thinks it was as much as four years ago, whether more, or less, cannot tell.

Cannot tell the time, exactly, that he has gone to bed at twelve or one o'clock—as much as a year if not more—Thinks it was as long ago, as the time of the killing of Mrs. Nash—whether more, cannot say.

His father took the control of his property, up to the time witness was twenty-one—witness took the deed about the time he was twenty-one—is now thirty-four. His father took back a life lease. There was nothing said about his paying out to others, then. Witness has since paid out something—Let Daniel have a horse, and plough, and a sister something.

One of his sister's ears used to run, when she was a child.

After his mother's decease, his sister did the work about a year.

Has some remembrance of letting a piece of cloth go—dont recollect that there was any difficulty, between his sister and himself about it.

Don't know that she expressed a wish to be baptized.

She had a fit of sickness, soon after she jumped into the well. Thinks it must be Dr. Wheeler, or Dr. Lane, who attended her—Dont recollect who he employed—she was pretty sick along a spell.

She has not been able to manage business—not so much as women in general—Dont drive her to work—She knits and spins—The best way they can get along with her is to let her do pretty much as she has a mind to.

Phila C. Corey—sworn. Is the wife of Benjamin Corey. It is five years ago come April since she came there to live. There has not been a day since she came there but the father and sister have appeared crazy. Father is talking to himself most of the time—In summer he goes to bed at twelve or one o'clock, in the winter at ten in the forenoon—he lies till morning.

Sister is wild at times—has run away.

Father appears to be afraid of the neighbors—whispers to himself when they are there—says when they are coming, sometimes, the devil is coming, sometimes other things—stands up.

Sister goes out of the room when the neighbors are there—have to watch her—Dont know respecting her jumping into the well—was before witness came there.

Father makes use of but little spirit, has always been temperate—sister does not use it.

Cross-examined. Saw nothing unusual in the old man until she went there—knew nothing but what he was as usual except what she had heard. Mary Morse had charge of the female department when witness went there.

Old man lies quiet after going to bed, except when talking to himself. Talks to himself no more when the neighbors are present than at other times—appears more excited sometimes when the neighbors are there—Does not pass salutation with them.

Sister does not hide, other than she goes up stairs—Can't state that she has run away but once—sometimes she will work, sometimes not ; sometimes she talks, sometimes not. She was confined to her bed a year after witness went there—had no physician—could not get her to say a word for a long time—has known her to go without food five days.

The old gentleman takes a little cider and a little spirit.

Re-examined. Sister does not go abroad or receive visits like other persons.

Do not often have spirit in the house—Do not urge liquor upon the old man—Has never known him to drink too much.

Olive Beverstock—sworn. Went to live with Benjamim Corey seven years since—His father was in a deranged state—talked to himself a great deal. Appeared to think that somebody was coming after him—would go to the window, run back and say they were coming after him ; this run in his head a good deal—He would not always answer questions. Did not go abroad, or converse with the neighbors. When he went to the window would say the devils were coming—the hell cats were coming—when talking to himself would swear very profanely.

Seven years ago the sister was as capable of taking care of the family as any body. Six years ago she was not capable of doing any thing—witness lived there at this time fifteen weeks—had to watch her—did not dare to let her go out of the room alone—appeared as if she would make way with herself—made no conversation with people—would not bid them come in when she was in room alone—after a time did not appear so wild.

Cross-examined. Has lived about six miles off—is cousin to prisoner—old gentleman offers no violence to himself or others.

Seven years ago witness went on a visit and staid about five weeks; the sister was then capable—six years ago she was in a strange way—laid on the bed like one dumb—Dr. Wheeler was there once—Dont know what was the matter.

When there five weeks they had difficulty in getting the old gentleman to bed almost every night—He used a little spirit when his son gave it to him—never knew him drink except nights when he went to bed.

Zeruah Guillow—sworn. Has been acquainted with the father about twenty six years—lived within half a mile—he has been a temperate man. For the last seven years he has been in a deranged state—whispers to himself—Has always answered witness when spoken to—Does not go out to see the neighbors, nor talk except to answer questions.

The sister does not make any conversation—generally speaks to people now when spoken to—has been to witnesses house twice; a year ago last fall was the last time.

To a question by the Court. She never was a great talker, formerly more than now.

Guesses it was about four years ago that the change took place—then did not answer people when spoken to—did not answer witness—thinks this lasted not over two years—Guesses she did not, during that time, take charge of the family.

Cross-examined. Has lived all the time within half a mile —The father has been temperate; managed his business to the death of his wife—Generally answered when witness spoke to him.

The sister had a sore in her head, when she was a child about two years old; it continued several years—she was confined to her bed sometime within six years—Dr. Wheeler there once. Dr. Lane attended after.

She had religious experience during the life time of her mother—The mehodists preached in the neighborhood, and at Mr. Corey's—She was under concern of mind and was brought out—desired to go forward but never did.

Never heard that the family opposed her being baptised.

Timothy Dort—sworn. Has been acquainted with prisoner from childhood—lives six miles from him—Was with him at a religious meeting about six years ago at the north schoool house in Gilsum—Corey sat by the side of witness—sallied back against witness' breast and became stiff—They carried him out, he remained so

ten or fifteen minutes and came to—said he was subject to such turns when he worked hard.

About three years ago, at a meeting at Mr. Hendee's, Corey made an exhortation and asked leave to pray—made some odd expressions. Some thought he was crazy, witness thought not, but thought he used expressions which were not proper—went beyond common sense.

Cross-examined. The meeting at the school house was not crowded—it was in the forenoon—Corey turned pale—did not froth at the mouth—no struggling after he became stiff—Did not appear to be red in the face.

Re-examined. Corey appeared to engage in the prayer devoutly—Appeared to be religious—Had, before that, professed religion.

Luther Whitney—sworn. Was present at the time mentioned by Dort, when Corey had a fit or fainting turn—then thought it a fit—Confirms Dort principally—Did not observe his countenance particularly—Did not hear what he said about being subject to them. Went back into the house before Corey did.

Cross-examined. Thinks it was in August or September, 1824 or 1825—possibly as late as 1826—Thinks he had heard said he had fits before.

Benjamin Corey, called again. Knows his brother's having had fits, about twenty five years ago. The first witness recollects was when he was in bed with him—another about the same time while eating—The way they used to recover him was to burn feathers under his nose—Recollects another at a muster at Walpole in the morning—While in the ranks on the line he fell against some one—got over it and was dismissed.

Recollects his having a fall when going to meeting at Sullivan—struck on the ice on his head.

At another time had been sawing shingle stuff—attempted to slide and fell on his head.

At another time, getting wood, fell on his head on the ice.

About two years ago he went to catch his horse—came back from another direction from that in which witness expected him to come, the girth of the saddle broken, and his cloths dirty as if he had fallen; said to witness "where be I—I don't know where I am going"—Took him off the horse and into the house. He complained of his head feeling ugly. Thinks this was in the forenoon.

Cross-examined. Thinks the Walpole fit was about fifteen years ago—Dont recollect any fit since.

The falls were all since—Can't say when the first was. Had no grog when out sawing the shingle stuff. Dont expect they had the morning they were going to Sullivan.

George Corey—sworn. Is a son of the prisoner, sixteen years of age. About three weeks before Mrs. Nash was killed, his father was

chopping in the woods—came in and said some one had shot at him with a spring gun ; that he heard the ball whistle by his head, but heard no noise and saw nobody.

On Friday of the week before the killing, he had been in the woods in the forenoon—came back, and said the devil had set out to kill him—threw him off of the log, and he struck on the back of his head—said he was afraid and would not go back alone—but he would help witness hoe out the corn, and then witness should go help him cut the brush.

Zeruah Guillow, called again. Two years ago last spring, staid at Corey's over night—he appeared deranged, was very noisy—did not appear intoxicated—had drank nothing to her knowledge.

He said he must go—appeared to be in a worry—said the Lord had called him and he must go. Did not at first say where—afterwards said, among the heathen—said if he could take his family he should go willingly—was worried about it—this was the latter part of the night. He read a chapter in the bible, sung a hymn and went to prayer.

They made him tansy tea ; he said they wanted to poison him, would not taste it until they had—then said they would not poison themselves and drank it. They put burdock leaves on his feet—thought he had the hystericks.

The winter before the killing he complained of pain in his head—said his head felt strangely. Sometimes before he appeared regularly, sometimes out. He attended the same religious meeting with witness.

Cross-examined. Mrs. Corey sent for her, the time she went there. It was not said that he was in one of his drunken fits. There was no rum in the house, or cider. He slept about two hours, the latter part of the night ; was awake, when witness went away, and not so rattling, as he was before, but not in his senses.

They thought the burdock leaves would draw the craziness from his head, and that tanzy tea was good for the hypo.

Witness has never seen him drunk, or worse for liquor, to her knowledge.

Susannah Morse—sworn. Lives about a mile from Corey's. He was at witness' house in March, 1829, getting out flax,—said God had called him to go and preach to the heathen in the North-East, and he should not rest night nor day till he had done it. He had drank nothing for two months—he had said so before, not many months before—was not in liquor.

Witness was at his house seven years ago—he said he had seen a great light, a ball of fire go down towards Cyrus Bliss' ; that hell had broke open and they were throwing bomb sheils.

The day before Mrs. Nash was killed, Corey was at her house about one o'clock—said he wanted to lie down on her bed, he could not rest at home for his wife had either got the devil in her, or was bewitched or crazy ; he laid about an hour ; shut his eyes but did not sleep—wanted her mother to go to his house and see

his wife, and see if she could not make her more reconciled, for he could not rest in his house.

He said, before he laid down, that after resting an hour he should go and work in his mine; that he should be a rich man—the whole hill would shine with silver and gold, it was all over his farm and on his house.

When he got up he enquired for his hat which he had hung up himself in a different place from where he usually hung it—carried it in his hand out before him—walked about twenty rods and put it on—walked very erect and fast—took his cane under his arm—went towards Sullivan—was gone about an hour and a half—came back, but did not stop, spoke to nobody—carried his cane in one hand horizontally, and swung the other hand violently—went towards home.

I saw him again between sundown and dark—asked him how his mother got there—he said he did not know—asked, “she is there is she not?” he said “yes she is there”—went off towards town.

Witness has often heard him complain of his head before this—that one side of it felt strangely—has complained of it for two or three years.

Cross-examined. Heard him say he had not drank for two months—has seen him when he appeared to have drank too much; but not a great many times—one time when he came home from training. Witness has once called there when other folks said he had drank too much—dont know of his abusing his wife when in liquor—never saw him break his furniture when in liquor.

Did not know of his drinking any thing on Friday—on Thursday, about one o'clock, he drank a glass of rum at witness' house—was then complaining about his head; her husband and he had settled accounts. He did not ask for liquor, her husband asked him to drink.

It is about two miles from her house to Sullivan town. He came back by the house and went towards home, was gone about an hour and a half when he came by again.

Re-examined. On Thursday, before drinking, he appeared deranged; went in and sung with his mother—talked about his riches—had before complained of his head—before that day.

Elisabeth Morse--sworn. Is the mother of Mrs. Corey, was at Corey's house the night before Mrs. Nash was killed. He was on the bed when she went up from her son's. Corey wanted her to go up and see if she could make his wife more reconciled—said she was crazy, bedevilled, bewitched or something—wanted to lay on her bed because he could not rest at home.

He came home while witness was there, staid but a short time—said nothing to her—came back again about dusk, went up chamber and laid down. Said he had got a new wife, talked about her and prayed for her in the night—Said she was Dr. Lane's sister—He appeared very raving—There was no rum in the house to her knowledge nor any cider—During the night he hallooed and pray-

ed—this continued pretty much through the night—they got no rest—Towards day he went to sleep and rested awhile.

In the morning he went out to his mine—came back and said his angel told him to take off his black jacket and put on his red one—he hunted for his red one some time before he found it—put it on.

He said his angel was in the mine or about it—that his mine was all silver and gold—that his house was all covered with it—but his brother Ben's. had more of it.

He eat but little, drank a cup of weak tea—no cider.

After breakfast he went out with his staff—there was a block at the door with a hole in it—he put his cane into the hole, carried it over his head and walked before the door—looked and acted like a crazy person—went round his field, came back and sat down on the stone of the door—sat awhile, then called for a chair and sat down in the door—would not let his wife or children go out—said if they did he would knock them down with his staff—kept them there an hour and a half—took his gun down, opened the pan—there was no priming—he laughed and put it up again. He then went to his mine, came back, sat down by his wife and said “now we shall never have any more difficulty.”—Witness never saw his eyes look so before.

He went out again and they all went off to Daniel Nash's because they were afraid.

When he sat in the door he said if they attempted to go out he would knock them down, or knock their brains out.

Cross-examined. When he came back about dusk, on Friday, he was noisy—did not sleep much that night.

Witness got up about sunrise—he was up before.

She has thought he was out a number of times before, sometimes when she thought he had drank—sometimes not. When they came for her at times previous, they did not say he was in one of his drunken frolicks—said he was crazy, and would break things. He did break things. Has heard his wife and others say to him he would be well enough if he would let rum alone.

He had drank nothing for forty eight hours or so previous to Saturday forenoon to her knowledge.

He had no rum when her son and he began the settlement on Thursday—drank about a glass at the close.

Dont consider a man drunk until he begins to reel, or staggers.

Re-examined. He appeared deranged on Thursday. Sung in her room “Glory to God,” before drinking the rum—was not worse for liquor—said he should be rich enough. He was wild enough. He did not call for the liquor, her son offered it.

Cannot say she has not seen him the worse for liquor, was about three years ago. Was not worse for liquor Thursday, Friday, or Saturday, of that week.

Has frequently heard him complain of pain in his head.

The morning Mrs. Nash was killed, after they left the house, George was sent off to the Selectmen of Sullivan, to have them come and take care of him.

Cross-examined, again. He had in the course of the year before been able to attend to his business, at times.

Phila C. Corey, called again. Four years ago, heard prisoner complain of his head—said he felt deaf sometimes. Sometimes he said he felt as if there was a dropping of water in his head. He said he was afraid, if he did not get help, he should be as crazy as his father.

On the Tuesday before Mrs. Nash was killed, he came to get them to go and see his mine—he said there was enough of gold and silver in it, for them all. They went—in going up to the mine he said, none of them knew what he had got to sail through, before he died, but he knew—he had got to sail through bloody seas. He then began to sing, "Glory to God, the meeting house rings"—sung loud, and until they got to the mine—When there, he took up some common dirt, with ising-glass among it, and said, "come and see for yourselves, if there is not gold and silver enough." They did not care to cross him, and her husband said it did shine, pretty well. The mine was about four feet long, and two deep.

Saw him on Wednesday morning, in their door yard—he appeared to be looking around—she asked what he was looking after.—He said he was looking after gold and silver, it was all over his farm, and over his house, and had begun to spread on their's—said he was going to lay down and rest, and in a short time, should go to old England, to get men to build furnaces, to separate the gold from the sand.

Saturday morning, saw him coming toward the house, walking very fast—she observed to her husband, that he was crazy enough. He went as far as the barn, and turned. They went out and spoke to him—he made no answer—walked back, very fast. Got a little ways, and begun to sing very loud—looked very wild. After noon, heard the outcry—started towards his house—heard him halloo, and stopped—saw him when they brought him down, after they took him. The froth was running out of his mouth and nose. Witness said to her husband, that he was dying.

Cross-examined. Her husband has been called frequently, to go up there.

Never saw him drink to excess. He had drank no cider at their house for eight weeks before.

Can't say but that they had had trouble with him, for a fortnight previous to the killing.

His eyes were glassy Saturday morning—were wild. He was pretty much travelling about, that week.

Witness had never seen him in such a situation before.

Had seen him a number of times, before, when she thought he was deranged.

Benjamin Corey—called again. His brother came to him, in the field, Tuesday forenoon, and had a pint basin in his hand—made signs to him to go aside, and told him, what was in the basin was worth five dollars. It was, in fact, dirt.

(Agrees with his wife, about going to the mine, on the same day.)

Before this, his brother had said, that he heard a ball whistle by his head, fired from a spring gun, and that he saw no one.

At another time, witness thinks the same week Mrs. Nash was killed, he said there was twelve smart men come from Walpole, and had their guns cocked, to fire on him, but his angel told them, they must not.

His appearance on Saturday was, as has been related by his wife. His eyes appeared wild.

Prisoner has always been friendly to Mrs. Nash, and kind to his wife and children, when in his right mind.

Witness found the pail, not far north of where he had dug his mine.

Cross-examined. His brother has used spirit, some, for ten years past—has not seen him intoxicated. May have attributed some of his difficulties to rum, but does not think all owing to that, or that he was intoxicated that week.

There had been difficulty, between witness and his brother, about an iron bar, and a road.

James Hudson—sworn. Has been acquainted with D. H. Corey, seventeen or eighteen years—has lived in the same house with him, part of the time. The fore part of the week, in which Mrs. Nash was killed, Corey came to witness, in the field, and said he had found something pretty curious, among the ledges—showed witness some sand—witness told him it was sand—he looked wild—"Gold and silver mine," said he—told witness to look at it—witness said it did shine—Corey said he found it first, and it belonged to him—that it extended a great ways, and that his farm was worth more than all the United States. He said there had been difficulty between him and his wife, but he had now found out the cause, and there would be no more difficulty.

Cross-examined. Witness married Corey's sister.

Lucinda Hudson—sworn. Was at Corey's nine days before Mrs. Nash was killed. Corey asked her if she came by the hog's nest, and told her not to go there, they would kill or starve her—He appeared to be wild—A bumble bee came into the room and he said it would take him and fly to hell with him. His wife poured cold water on his head—he used harsh language to his wife. About sunset he took his axe and said he was going to the woods to chop all night.

Cross-examined. Corey is her uncle. Witness has not agreed with Miss Bingham to tell the same story.

Maria Bingham—sworn. On Thursday, the day of the election, [June 4,] witness went to Corey's with Lucinda Hudson. Corey was not at home when they got there; came in and spoke to witness as usual—laid down on the bed—complained of his head—he then sat in the door, and his wife turned cold water on his head. A bumble bee came in, and he said it was an angel, who would fly

to hell with him. He was profane and loud—did not appear intoxicated; walked well—witness had never heard him profane before.

He left the house, just at night, and said he would chop all night.

Rufus Mason—sworn.. Was Selectman of Sullivan, in 1829. The paper now presented to him, he found at his house, about sundown, the day Mrs. Nash was killed. Understood it was brought, and left, by D. H. Corey's son.

George Corey—called again. Witness carried the paper to Mason's. He received it in the morning, at Benjamin Corey's, and went with it to Daniel Nash's, to have him carry it to the Selectmen—Nash said he could not, or would not, witness is not certain which. Witness then returned home. When the family left the house, he carried the paper to Mason's.

Cross-examined. Started from their house, before the killing of Mrs. Nash. When they got to Daniel Nash's, his mother sent him right on with the paper.

Re-examined. When he came from Nash's, in the forenoon, his father took his post at the door, and kept them confined there, until about noon.

Witness first heard of the killing, after his return from Mason's, about sunset.

John Guillow—sworn. Witness wrote the paper, the day before Mrs. Nash was killed. Mrs. Corey signed it, and left it at Benjamin Corey's.

The paper was then read.

It was signed by the wife of the prisoner; addressed to the Selectmen of Sullivan; and contained an urgent request that they would come and take care of her husband, stating that he was so deranged, that she considered her life, and the lives of her family, in danger.

The evidence for the prisoner, was rested here.

Adjourned.

Afternoon.

MR. CHAMBERLAIN, *Solicitor*, said, in substance, that from something which had transpired, the government had anticipated the nature of the defence, which would be made in this case. He should now attempt to show, that the prisoner was intoxicated at the time, or that all his insanity, if there was any, was produced by an intemperate use of ardent spirits. He proposed to introduce evidence, that a few days before the murder, the prisoner had purchased a quart of liquor, and was drunk—that he had been

previously intemperate—that he drank spirits on the Thursday previous to the transaction, and that on Friday, the day before, he was in Sullivan, drinking.

He should contend, that if he was not actually intoxicated at the time, yet, if he knew liquor would produce a frenzy, and took it with that knowledge, he was liable for whatever act he might commit, during its continuance.

CHIEF JUSTICE RICHARDSON, inquired, whether he expected to convict of murder, in case it had become a settled derangement, even if it did proceed from that cause.

THE SOLICITOR, replied, that if he had taken intoxicating liquors, knowing that they would produce such an effect upon him, he should contend that he ought to be convicted.

He cited the case of William McDonough, a note of which is found, in Buck's Medical Jurisprudence.

“William McDonough was indicted, and tried, for the murder of his wife, before the Supreme Court, of the State of Massachusetts, in November, 1817. It appeared in testimony, that several years previous, he had received a severe injury of the head—that although relieved of this, yet its effects were such, as occasionally to render him insane. At these periods, he complained greatly of his head. The use of spirituous liquors, immediately induced a return of the paroxysms, and in one of them, thus induced, he murdered his wife. He was, with great propriety, found guilty. The *voluntary* use of a stimulous, which, he was well aware, would disorder his mind, fully placed him under the purview of the law.”—*Vide 1. Buck's Med. Jur. 375.*

THE CHIEF JUSTICE, said he was inclined to think, that if he took intoxicating liquors, knowing their effects on him, and committed the deed, while under their influence, he would be liable for the manslaughter.

MR. PARKER, remarked, that for aught which appeared in the statement of the case of McDonough, cited by the counsel for the State, he was at the time, under the immediate influence of the liquor. The prisoner's counsel were prepared with authorities, to show, that if he was insane at the time, whatever might be the cause of that insanity, he was not accountable.*

The Counsel for the State, proceeded to introduce the testimony.

Jebiel Day—sworn. Witness kept store in Gilsum, in May 1829. The Friday but one before the murder, he sold Corey a quart of high proof gin.

(The witness was about to state what liquor stood charged to Corey on his books, but the evidence was objected to, as inadmissible, except so far as the wit-

*See Note C.

ness had made the entries or had knowledge of the delivery—and the Court sustained the objection.)

Corey has got liquor there, at other times, and paid for it. Has known of his having liquor, frequently.

Cross-examined. It was Friday in the forenoon, of the fifth of June, that he got the gin. The store is two miles and a half from Corey's.

Will not swear certainly, that it was in the forenoon—cannot fix the hour. Corey carried the gin away. He appeared regular when he came in—drank freely of the gin before he went away.

Corey was not at the store after the fifth, and before the killing.

The next time, previous to the fifth, that he was there, to witness' knowledge, was about twelve days.

Re-examined. Liquor had the same effect on him, as on others—did not make him more wild, than any other person.

Benjamin Thompson, jr.—sworn. Saw Corey, two or three o'clock in the afternoon of the fifth of June—heard him halloo three times—he was then silent about five minutes, and then hallooed again, three times. Witness went to see what the matter was. When he got to the road, Corey lay on his back in the road, and hallooed. Corey tried to get his hand in his pocket, and could not—then said he would drink, rolled over and took a hearty draught. Witness' father came and took his jug away. Corey said, that's right, brother Thompson, G—d d—n you.

They got him up, and led him a piece; he refused to go, and they laid him down again. He hallooed, and the neighbors came, thinking witness might have got hurt. They led him along a piece farther, and laid him down. Near night, they took him to witness' father's. He was troublesome—got so he could walk, before morning. Started for home, in the morning—hallooed—came back—called for his jug—witness emptied out what was in it, about a glass, and gave him the jug—he then went home.

In answer to a question by the Court. He appeared rational, the next morning, much more so, than the night before.

Witness told him he had hindered him, and asked him if he was willing to come and help witness as long—Corey said he would.

Benjamin Thompson—sworn. Has known Corey, thirty years. Has never heard of his being deranged, until this occurrence. Thought he had a liking for liquor. Corey has worked for him—has never drank to excess, when at work for him—never called for liquor, when at work for him.

Agrees with the testimony of his son, pretty much. Corey answered questions that evening. Contradicted witness' wife, about his children, and was right in his statement.

Cross-examined. Has lived about a mile and a quarter from Corey, for eight or ten years. Has not known him intoxicated, in that time, except this once.

Solomon Mack—sworn. Has known Corey since his birth. He came to witness', Thursday, June 11th, in the morning; took out some lumps of dirt, and asked what he thought of it. Corey said he thought it was a mine of rich gold. Witness did not pay much regard to it—thought it not worth while to cross him—mistrusted he was worse for liquor—had never seen him so before.

Corey asked him for some cider—thought it not proper to give him any. He showed his mine to the folks, sat at breakfast with them, took a cup of coffee or two, eat a light breakfast. As he rose from the table, saw there was cider on the table, and drank—thought he drank hearty enough.

Witness asked him if he was not afraid of taking cold, laying in the road by Thompson's. Corey said no, he was so full of gin, he could not take cold—said he had, the day before, drank a pint of rum, and a quarter of a pound of tea.

Cross-examined. He came to witness' house, before sunrise—his only errand, was to get witness' opinion about his ore.

Never knew him to be in that situation before. He gave no information where he drank the pint of rum, and the quarter of a pound of tea.

Re-examined. Never heard of his being crazy, except with liquor, before this occurrence.

Nathaniel Evans—sworn. Kept store in Sullivan in June 1829—On Friday morning, June 12th, Corey had two glasses of wine at his store, and some gingerbread. They were common wine glasses.

He appeared to have no business—was in a worry—wanted something to drink—said he had eat nothing for two days.

Never saw him appear before as he did that morning.

He was there again in the afternoon and got a dozen crackers—appeared as he did in the morning.

Does not recollect selling him any rum near that time, and had told him he should not sell him any, having heard of some disturbance previously.

Cross-examined. He appeared to have no buisness there at either time.

David Dean—sworn. Has known Corey twelve years or more—Has been called up to his house several times. Corey had a barrel of cider either the spring before the murder, or the spring before that—Case of drawers was broken—Corey drank freely of the cider—understood his family was at Mrs. Morse's—The neighbors were around, and Corey refused to let them in—had a lever and said he would knock them down—They got away the cider.

Was one time when he saw him *out*—cannot say whether he had been drinking, or not—This was within a week of the murder, at Dr. Guillows.

Corey's wife has told witness she thought he would be crazy, sometimes, if he did not drink.

Witness has tried to make an agreement with him, not to drink. Corey said, sometimes, he thought he would—then again, said he would drink, for all Deacon Gibbs, or any body else.

Cross-examined. Has lived in Gilsum, ten or twelve years. Saw Corey once, at Thompson's, intoxicated. Saw him at Benjamin Corey's once, badly *done to*—this might be three years ago.

Never saw him appear, as he did at Guillow's, at any other time—thought he was then a little deranged.

Mostly thinks, it was the spring before the murder was committed, that he drank the cider.

Deacon Dalphon Gibbs--

Was objected to because his name was not on the list of witnesses, furnished the prisoner. There was an entry on the list of the name of *Dolphin* Gibbs. The witness said his name was Dalphon, but people often called him Dolphin.

The Court cited 2 *N. H. Rep.* 557 *Tibbetts vs. Kiah*, and admitted the witness.—*sworn.*

Examined. Has known Corey thirty years. Never heard of his insanity, until the time of this occurrence.

Corey is an able bodied man—works hard. Never saw him in liquor but two or three times—was then wild.

In 1828, town meeting day evening, Corey was at witness' house in a deranged state—said he had called at Evans' and got some rum.

In April 1828, Ben. Corey came and requested witness to go and take care of Daniel, because he had got a barrel of cider and would break every thing in the house. Witness went and found him in a high gale. Witness called on the Selectmen to take care of him, and they advised him to go back and get the cider away. He went back and Corey agreed if he would let him drink once more, he would throw it out of doors—Witness agreed he might drink once more—Corey drank nine tumblers, and then took up the barrel and threw it out of doors.

Thursday, the 4th day of June, he reproved Corey for drinking. Corey said it was not rum that caused his derangement, it was owing to Ben.—that Ben. provoked him so that he could not help going to the store and getting rum.

Witness lives about a mile from him—Has never known of his being deranged except from liquor

Cross-examined. The time Corey had the barrel of cider, was in the spring of 1828—Dont know that he has had any since.

On the Thursday when the witness reproved him, Corey said he worked hard and thought it no more harm for him to drink a little rum than to drink strong tea.

On the evening of town meeting, 1828, Corey came to his house to a religious meeting—wanted to pray—did pray two or three times—was wild in his expressions—did not stagger—witness had no evidence that he was intoxicated except knowing that he had got half a pint of rum at Evans' in the morning, and his extravagant expressions.

John Farrar—sworn. Has known Corey a number of years—Corey had worked for him—Has thought he was in habits of intemperance—two or three years he had craved for liquor—Had known of his drinking some --makes him ambitious.

He had conversed with him about his drinking—thinks he said the first time, that he thought he was injured by liquor. Saw him Friday going by Morse's.

Cross-examined. Thinks he has seen him a little intoxicated—in 1823--said he had been piling. Thinks he has seen him at other times when he had drank full enough.

Luke Joslin—sworn. Has been acquainted with Corey—Was at his house in the spring of 1828—thought he had been drinking considerable cider. Did not hear him threaten much—was turbulent—the furniture was broken.

Never heard of his being crazy until the time of the murder.

A year ago last winter, or two years ago, saw him in the road—thought by his gait that he had been drinking—he looked wild.

Cross-examined. Witness lives two miles from him.

Charles Cummings, jr.—sworn. Has known Corey twenty years or more. Has never known, or heard of his being deranged except from liquor. Has seen him once when he thought him worse for liquor. Has seen him at other times when he was gay. Corey has worked for his father—made free use of liquor—more than others.

The latter part of May, 1829, as witness thinks, Corey said there had been a difficulty with Ben. about an iron bar, and Ben. had fenced up the road.

Saw him the Friday night before the murder—he was at witness' house, wanted some water, appeared agitated and wild—Wanted Morse's boy who lived with witness, to go home with him. Witness asked him what he wanted of him—Corey said he was afraid to go home alone. Morse had told witness he did not want the boy to go up there because he was afraid Corey would put some of them in the hole he had dug, and witness refused to let the boy go. He went off swinging his cane—appeared much as he had done before when witness knew he was in liquor.

Cross-examined. Saw him on one occasion when he had been taking too much—this was fourteen or fifteen or eighteen years ago—Corey and his father, and he thinks Ben. had been at work at witness' father's—Spirits and cider were carried out to them. In the afternoon Daniel drank freely—at supper he sprung and fell over backwards—it took three or four men to hold him—They sent for a physician who bled him—relieved him after a time—His eyes were wild. He had worked well up to the close of the day and came out of the field well enough.

Corey made no errand when he came on Friday, except that he wanted Nathaniel Morse to go home with him, because he was

afraid of his wife—He went off very erect, and very fast—Never saw him swing his cane so before, or heard him say he was afraid before. He said he was afraid to stay alone, and thinks he said he was afraid of his wife.

Re-examined. Had seen him before with a cane.

Deacon Asa Nash—sworn. Has been acquainted with Corey thirty years, or upwards—He has been in the habit of excessive use of ardent spirits. Witness lives about two hundred rods from him. Has been frequently called to go up there—Was sometimes said he was in a rum scrape; sometimes in a crazy scrape. One time at a muster, seven or eight years ago, at Walpole, he had drank freely—found him not far from Kingsbury's by the road side—got him into the waggon—he swore—was loud and made trouble. This has been his uniform habit on any public occasion. His conduct has been turbulent.

Before he killed witness' mother, never heard of his being crazy.

A little more than a year before the murder, witness went to Corey's house, David Dean and others were there.

As high as his memory serves, in July, he was pretty raving, put his gun out where a square of glass was broken—opened the door and said, if any body came in, he would be the death of them. His wife was there—thinks this was the time he said to his wife "If you say so again I'll strike you"—she said something, and he struck her. Witness put him on the bed—he swore. Did not know what the cause was, but he acted just as he did when witness knew he had been drinking.

He called for something to eat—after he had ate, he and his wife were in the bed room, and commenced a new quarrel. He got hold of her hands, and held her so that the blood was settling around her finger nails. They prepared to get her loose, and he let go.

Witness saw him afterwards, and he said he had had a devilish good scrape, and related the particulars.

Cross-examined. As to the times he has seen him intoxicated—Saw him at a time when Ben. had a building moved—was pretty gay—lively, ambitious and talkative. On training days has seen him so—cant fix any time. Not far from ten years ago, at a muster—run a race with witness. Witness out run him. Dont think of any other time.

THE SOLICITOR Observed, that there were other witnesses in attendance, to prove the previous intemperance of the prisoner, and the effect of spirit on him, but that their testimony would probably not materially vary from the evidence on that subject already introduced.

THE COURT remarked, that unless the result of the evi-

dence would be varied, it was not worth while to consume time, in examining them.

THE SOLICITOR further suggested, that physicians were in attendance for the purpose of hearing the testimony, whose opinions the Counsel for the State had proposed to offer in evidence—and they had also persons present, who had seen the prisoner since his confinement, to show that he was not deranged when they had thus seen him.

THE CHIEF JUSTICE said, in substance, that he did not perceive that any thing could result from this evidence—that the opinions of physicians were not necessary, to show that the wounds would produce death ; it was in evidence that the brains of the deceased were literally knocked out—that the opinions of physicians, whether the prisoner was, or was not insane, on the facts in evidence in the case, were not admissible ; their opinions on that question, were no better than those of other judicious men—it was the duty of the jury, and they were doubtless competent, to settle the fact.* And that the evidence of persons who had seen him since, could not be admissible, for if it proved him to be sane afterwards, it could not vary the case ; the question was, whether he was insane at the time, or not.

The evidence on the part of the State being closed, the Prisoner's Counsel proceeded to introduce some further testimony.

Daniel Nash, called by prisoner's counsel.—Corey borrowed two or three small pieces of silver of him—one was a four pence-half-penny—another a nine pence. He wanted them to shoot his old cat with. This was a short time before his mother's death.

Has heard that he attempted to hang himself, cannot say who told him—dont know the fact himself.

Corey has told him frequently, that his head was a potash kettle, and that it was so thick at the sides that it could not get out there, and that it must go out at the top. Did not say what could not get out, but must go up. Witness supposed he meant liquor—Can't say when this was—It was not far from the time of the death.

Betsey Nash—called for prisoner. Did not see the mark on his neck. He was shy about it.

Was at Corey's on the 27th of May—He drank some. Mrs. Corey spoke to the boy, and he took the jug and carried it out doors. Dont know that the contents were turned out except what Mrs. Corey said.

Rufus Guillow—sworn. Went to Corey's Monday morning but

* See note D.

one before Mrs. Nash was killed, to get him to go and work for witness' father. Corey asked him if he heard the alarm. Said they had all got to go to fighting—that the British had come over to fight against America. He asked witness also, if he did not hear the bear in the woods—said he heard him every morning; made a noise like a dog.

Corey worked for his father that day in the forenoon. The cat came into the field, and he offered a dollar for the privilege to kill her—said she looked like a devil.

John Guillow—called again. Corey worked for him—thinks it was the Monday before the death—Spoke of twelve men coming from Walpole, to kill him; his wife got them to come. Had a swearing fit—wanted to kill the cat—laughed—said he had killed his own cat, and wanted to kill all black cats.

He drank a very little cider at dinner, and after dinner, lay down on the bed—was wild, and witness told him he had better go home.

Saw him the Friday before the killing; he was very wild; his eyes glassy—was any thing but rational. Witness went to bleed him, but did not.

Cross-examined. Occasionally bleeds—had bled Corey twice before. His disease was commonly attributed to strong drink. There were reports that he drank, but witness has never seen him drink much.

Betsey Guillow—sworn. Has known Corey a long time—he has appeared to be fond of his family—he came to work at their house, witness thinks, the beginning of the week that Mrs. Nash was killed—dont know the day. He called for tea at dinner—did not drink any cider, to her knowledge. His eyes looked wild. He laid down on the bed, after dinner—said he must leave off drinking spirit, but that was not the cause of his difficulty.

On Thursday, he showed his dirt, and said it was all gold.

George Corey—called again. Was not present, when his father shot the cat, but heard him—supposed it was him. He had told them they might go out, and they were some distance from the house. This was a week or fortnight before the death of Mrs. Nash. Witness skinned the cat the next day—found the four pence half-penny, under the fore shoulder. His father said she was bewitched—said he would kill all black cats. He went into the bushes to load his gun—supposed he intended to shoot himself.

At the time the cat was killed, there was not a drop of cider, or any spirit in the house, and had not been, for some time.

The night before Mrs. Nash was killed, his father was lying on the bed, and said, "My angel tells me I must go and cover him up"—he then took a handful of boards, and told witness to take another, and went down straight to the mine, and covered up the hole.—Said his angel told him, he must come and see him.

Soon after he dug the hole, he showed witness a hair snake in it, and said that was the spirit of an Indian, put there to keep the money.

Cross-examined. Nathaniel Morse, witness' father, and himself, went to Day's store; Morse got a pint of spirit—his father got half a pint, and the three drank it. This was the week before, or two weeks before Mrs. Nash was killed.

Has no recollection of going to the store at any other time.

There was a pint got the week of the murder—got at Evan's store, by Ben., witness' brother—his father sent Ben.—thinks it was on Tuesday—it was the day he found his mine. His father drank about a gill. He was at home, walking round the farm very straight—as straight as any body. He did not drink much over a gill. It was all drank up the day it was procured. It was the day before he went to Capt. Mack's, that the rum was got. He took part of it, and went down to his mine, and went to work; brought the chief of it back. They drank of it while he was gone.

There was no other rum got that week. His father did not sleep much, on Wednesday night. He sung, "Glory to Angels"—Said he was going to be crowned king of America.

They drank of the rum because they knew rum made him worse.

Witness does not think he would have been well enough, if he had not drank.

Re-examined. His father sent Ben. in the morning, for the rum—Ben. got back in the forenoon. It was the day he found the mine—found the mine about noon. He had been digging there before for a fortnight.

His father was afraid of witches—at one time, put his axe up to the door—nailed down the windows, and stuck the darning needle over the cat hole.

The evidence was here closed, on the part of the prisoner.

The CHIEF JUSTICE, remarked, in substance, that he thought the jury could not convict of murder, on this evidence. Whether the prisoner could be convicted of any lesser offence, might deserve consideration.

The SOLICITOR proposed to submit the case to the jury, under the charge of the Court, but the Chief Justice, said it had better be argued.

Adjourned.

Wednesday morning.

MR. WOODBURY addressed the jury about three hours in behalf of the prisoner.

We give an outline of the substance of his remarks.

He said, that ere this the jury were undoubtedly aware, that they held in their hands the life of a fellow being.

Whether that life should be destroyed, or should be left unharmed, was the question to be decided. A question interesting to the publick—deeply interesting to the affec-

tionate wife and tender children of the prisoner—and to that unfortunate being himself, the most momentous question this side of the eternal world.

The decision of it would probably soon restore him to all the endearments of life, and extend the brief probation allotted him for repentance and hope, or it will send him at once—sane or insane—guilty or innocent—to meet the solemnities of eternity.

He did not stand there to deny, they possessed this alarming power over a fellow creature—erring mortals as we all were ; though the right to take life in this way had been denied by theologians, jurists, and, indeed, by the established codes of some whole communities. It may be wiser—it is surely safer to imprison for life. But our laws have not yet abolished capital punishment in all cases ; and consequently, an allusion had been made to this consideration, only to warn them, that, in a question about taking life from the prisoner—the very charge against him as to another—that in the exercise of a power where any mistake against the accused, whether accidental or designed, can never be corrected after he has passed that bourne whence no traveller returns—a power beyond any other in magnitude, they may ever exercise from their cradles to their coffins—a power, from many other considerations, so delicate and tremendous, they ought to exercise the utmost caution.

Hence by the principles, both of law and common sense, a jury cannot convict of a capital offence unless the guilt is clear—unless a wicked heart is manifested, and the offender has the possession of his mental faculties so as to be a proper subject of punishment, for either reformation or example. Hence all doubts are to operate in his behalf—all presumptions are in his favour. And if a conviction takes place in violation of these principles—the jury themselves become accessory to a judicial murder—they profane their own oaths in the presence of God, to decide only according to law and the evidence—and the whole trial becomes a mockery and a curse. Admit, that an adherence to these principles may sometimes lead to the escape of the guilty. But remember, they are the only principles which can shield the innocent. The lives of you—of all of us, depend on their preservation, and it is better that many should escape capital punishment here—if guilty—than that the safeguards of society should all be prostrated. The humblest, as well as the highest, is entrenched around by these principles—and if any are improperly rescued by their operation—they still, not only can be punished hereafter—but here, even here, they

carry about them the worm of conscience, that never dies, and commence on earth the sufferings of that hell, which the guilty must always endure.

Look at the deplorable condition of the prisoner in another respect, if you do not most solemnly and rigidly adhere to these principles in his favour.

He is poor, ignorant, and almost friendless, and in such circumstances appears before you alone, in a contest with two hundred and fifty thousand people—the whole population of the State—add to this the wealth of the State—its intelligent and active officers, and the alarming fact that you yourselves, as well as the Bench, are all, in theory, arrayed against him in aid of the prosecution, or among the prosecutors. This is not mentioned in the tone of complaint, but only of caution. Recollect, also, the prejudices and prepossessions to be guarded against from other sources. All the sympathies and better feelings of our nature have been roused against this wretched being. An aged female was destroyed at noon day without provocation. Her afflicted relatives—her own blood cried from the ground for vengeance. Rumour was busy with her thousand tongues—and her ten thousand falsehoods—attempting to mingle even Masonry and Anti-masonry in the boiling cauldron—and amidst all this excitement, it may be added, more in sorrow than in anger, that the Press itself has been affected, and the very types stained with gall.

Is it a matter of surprise, that under all these circumstances, this miserable man has already been tried and hung at half the fire-sides in the County?

Do we complain of this? far, very far otherwise. On the evidence before them, he has been rightfully hung.—On the evidence before the community, they have been rightfully agitated.

On the evidence rumoured—you, and all of us, would have been marble-hearted, and base, not to have wished his apprehension and trial. It is praise, and not censure, to the community and its officers, that he is before you. He has been rightfully arrested—rightfully immured within the damp walls of a prison, for many months—rightfully arraigned here—and it is hoped, on the law and the new evidence now before you, and before the publick, will be rightfully tried, and rightfully acquitted.

It is consoling, and creditable to humanity, that truth should thus overtake error, however late—that if error should start, as she often does, with the speed of the pestilence—truth should ere long follow, like health, with healing in his wings.

This public trial has wisely been provided for, by our

laws, with a view to correct any delusions—to remove prejudices, and evince to all, as has been evinced to this large audience, the real circumstances of that lamented occurrence, which has placed this unfortunate man, at the criminal bar of his country. On a little reflection, you will find, that, wretched as he is, even he, as well as the deceased, is entitled to some little consideration.

He is, at least, a human being, like the rest of us. He has civil rights, like others: he should be fortified and saved from injustice, by the law, as well as others: he has, likewise, some relatives to suffer—children to love and protect: and poor and friendless as he is, in some respects, is blessed with one fellow being—a wife, who has hung over his destiny, like a ministering angel, and endured and performed more to save him, than what has immortalized many a heroine of Romance. She—they, lament, as sincerely as you do, the unhappy occurrence, which ended in the death of Mrs. Nash.

They ask of you, no other treatment of him, under all the circumstances, than you yourselves would expect, in a like case. They only implore you, to guard against any hasty or delusive impressions, that might, regardless of strict law and evidence, hurry a being, of the same immortal hopes, and fears, and perils, with yourselves, suddenly and unpreparedly, perhaps, to the bar of his God.

They hold up before you, in the Records of Criminal Jurisprudence, numerous cases, where mistakes have occurred, under such excitements, and where juries have thus, themselves, unlawfully imbrued their own hands in blood, and embittered their future lives, with the deepest remorse and horror.

This is not the language of mere counsel. History and legal reports, are full of cases, of the most fatal, deplorable, and irremediable mistakes.

One of the ablest writers, on medical jurisprudence, expresses his strong convictions, that even many insane prisoners—the very case, as we contend, of our wretched client—have, from the subtlety of such complaints, and the precipitancy or prejudice of juries, that many such have been sent, untimely, wrongfully, barbarously—into the eternal world.

“There is no species of madness” says Marc, “which so much deserves the attention of the physicians, and the jurists, as *mania without delirium*. It has brought to the scaffold many deplorable victims, who merited compassion, rather than punishment.” 1 *Beck's Med. Jur.* 371.

We know that in this civilized age—and in this humane community, such will be your deliberate impressions—such your mature inclinations: and that having those cau-

tions, which the duty of counsel makes proper, and the excitement of this case demands, we can safely and coolly proceed to the investigation of the principles and facts, involved in the issue before you.

Were we not conscious that we could thus proceed, all must see, that little would be the regard you must cherish for the character of your country, as well as of your individual selves ; and great would be the reproach, over all the civilized world, cast upon the noble institution of the trial by jury. The panel would otherwise become a mere sewer, through which should run and fester, and corrupt, all the passions, prejudices and violence of society—without the purifying and preserving influence, of all those glorious principles of equal law, which our ancestors bled to secure—which have made our country a name, and a praise, in the earth, and which are now receiving the imitation of twenty-five millions of freemen in France.

This has helped to restore to their flag, the two colors symbolic of justice and truth ; and will lead you—from duty, as well as pride, to uphold the reputation of all our free institutions, and to publish to the world, that the motto of your own state seal—*fiat justitia ruat cælum*—is not vain and empty verbiage ; but a security for the triumph of truth, the administration of perfect justice, to the weakest citizen, whatever of clamour or excitement may at first have interposed, to warp and mislead.

This security, has hitherto been the boast of American juries—this is now the glory of a jury trial, in every free country ; and this leads us, in confidence, to place our lives in your hands, and to ask and hope, for the prisoner—from God and his country, a safe deliverance.

He then appealed to the jury, in relation to the sanity of mind, and malice aforethought, whether, after the full exhibition of the circumstances, attending the transaction, the counsel for the state might not have done well, to relieve the unhappy prisoner, from any further peril and defence. He did not, as his counsel, expect to be called on to address them : He regretted the necessity : But if, as we were left to infer, public opinion was still unsettled ; if the prosecuting officer still doubted, it was proper, however painful, to examine the case in detail, and have a verdict pronounced upon its character.

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

The first enquiry, and one which seemed involved in the very definition of murder, was the sanity of the prisoner.

This was not his sanity at the time of the trial—nor any

time precedent to the killing ; but at the moment of the supposed offence. In this enquiry, the causes of the alleged insanity were immaterial ; though they would properly come under consideration in another branch of the investigation ; but we now are only to ascertain, whether insanity existed, on Saturday, the 13th of June ?

It would, after the developement during the last two days, be hardly too strong to say, that any listener who still retained reasonable doubts that it did exist, was open to a suspicion, that he himself was, in some degree, insane.

One prominent feature in insanity, is, the cherishing opinions and performing acts; entirely different from the rest of mankind, in relation to certain subjects.

Now let me ask each member of the Jury, if, on the 13th of June, a neighbor had entered his house and informed him, that, at noon day, and not under the covert of darkness—that, on a helpless female and a friend, and not on an equal or an enemy—that, without any previous quarrel or grudge, and not on a dispute, and in revenge—that in a public highway, before a living witness, and without subsequent flight or concealment—an attack like this had been made, terminating in death, by a man educated among us, and hitherto of a moral and religious character—is there one who would not answer at once, “the man must have been insane ?”

Under such general considerations and impressions, made by the evidence on the part of the State alone—he did not believe that any human ingenuity could remove all reasonable doubts, as to the prisoner’s sanity.

With this settled belief, therefore, the case would there have been left by the prisoner’s counsel without calling a single witness, or uttering a single syllable in argument, had it not been an issue of life or death, involving to the accused, every thing temporal, and had it not been due to him and his relatives as well as the public, that the truth, the whole truth, and nothing but the truth, should go forth to the world on this final and interesting investigation. When we descend to particulars for the purpose of deciding on his sanity at the time of the killing, it is indispensable to carry with us correct notions concerning what constitutes insanity.

It may exist from birth, or for only a single day ; it may extend to all subjects, or only one : it may arise from physical or moral causes ; it may have been induced by an evil or good course of life—and yet, if it exists, the subject of it cannot be punished for acts, committed under its influence. So far as that influence extends, he is not an accountable being—he can neither control his body or his

mind, by reasonable and moral considerations—he is a mere machine of bones and muscles—and the punishment of such a person, for such an act, can neither reform nor intimidate, and would indicate a species of barbarism and ferocity, utterly derogatory to this enlightened age.

Such a person cannot, in the common acceptation of language, possess the other ingredient in murder—malice aforethought. But the acts, to be criminal, must be done under the influence and dominion of *malice*, instead of insanity—there must have been mind and sense, steeped in wickedness—*mala mens*—*malo animo*. The offender, in this case, must have had a heart deliberately and fatally bent on mischief—and must have done, as the great poet of nature expresses himself on another occasion—to an offender—

“Thou hidest a thousand daggers in thy thoughts,
Which thou hast whetted on thy stony heart,
To stab at half an hour of my life.”

But here existed, neither hatred, anger, or revenge, before the fatal occurrence ; but perfect harmony and esteem.

(Mr. W. here detailed and commented, on the cases of Hadfield, of Greenwood and others, to shew the nature and operation of partial derangement ; and how perfectly rational the subject of this malady might appear on some occasions, and on some particulars, when under the highest degree of insanity, upon other occasions and other particulars.)

He observed, that so inscrutable was this calamity, the reasoning powers, on most subjects, often remained in great perfection ; but the disorder was evinced, as Locke once remarked, only in the assumption of false premises. It could sometimes be traced to special causes, and sometimes not : but its existence once shown, the exemption from liability began, whatever may have been the cause, and whether clearly known or unknown. Though physicians cannot always fathom its origin ; nor tell what part of the brain, if any part, is affected under its influence : yet certain circumstances, both physical and moral, are found most likely to produce derangement, and certain indications of its existence have been ascertained and settled, from the earliest ages. To these we shall refer, more fully than might otherwise be necessary, in order that the jury may be satisfied, that they are not conjured up for the present occasion, by either the industry or ingenuity of counsel.

(Mr. W. here read from 1 *Beck's Med. Jur.* 350—375—and the article before cited from *Ree's Cyclopaedia*, on the causes of insanity.)

Thus we see, that the chief physical causes of this malady, are hereditary predisposition—paralytick attacks—epilepsy, and injuries on the head. Causes, every one of which, except the second, are clearly proved to have existed in the present case.

The father and sister, have been proved by sundry witnesses, not attempted to be contradicted, to have been insane for many years. Suddenly changing their appearance and conduct; avoiding society; neglecting their business; cherishing novel and irrational ideas, and treated and watched over by their relatives, as if deranged. The epileptic fits are proved likewise, not only by the brother, but by Whitney and Dort, and even by Cummings, one of the swiftest witnesses on the part of the prosecution.

The falls, severe and frequent, are proved by the brother and son; and the last one, combined with excessive labour, (another physical cause, mentioned in the books, and proved by the two young women,) we shall attempt to show, by and by, was the immediate precursor of the settled derangement, under which, in about nine days afterwards, the deceased was destroyed.

It is an established rule in philosophy, not to seek for new and doubtful causes of certain effects, where sufficient ones have already been shown to exist: and it is an equally well established rule in law, not to seek and impute evil causes for acts where innocent ones can be found. But here, though we fix beyond cavil numerous and adequate causes for insanity of a character physical and entirely innocent, the state, instead of contradicting one of them by evidence, compass Heaven and Earth to discover proof of some new and criminal cause like intemperance, or deny entirely the insanity, which these causes were so likely to produce—and which we contend they did produce. It was an insanity, most manifest and incontrovertible; not pretended now, for the first time; not counterfeited since the killing: But believed, the day before the killing, by those who examined him: An insanity, which, whether breaking out on certain occasions, from certain causes, at former periods, or not—had at least visited its unhappy victim, for nine days previous to this lamented event: An insanity, without a particle of evidence that he had, for weeks before its commencement, drank a drop of ardent spirit: An insanity that continued during the whole nine days, without the least proof of intemperance, within the time, except on a single occasion, and that, the very day after the insanity began, and eight days before the killing: An insanity, which, the day be-

fore the killing, had become so established and violent, as to induce the family to send for medical aid ; and after the arrival of the physician, and by his advice, to draw up and direct a paper to the Selectmen of the town, alleging the derangement of this unfortunate man, and invoking them to interfere and secure him. There can be no mistake about the incontrollable strength or truth of this last evidence. It remains in writing. It was not made after the occasion or for the occasion. It admits of neither coloring nor weakening. And if the public authorities, as was their duty, had seasonably interfered, the calamity which we all deprecate, would have been prevented. Delays are emphatically dangerous, in such cases.

Mr. W. here read, from the American Jurist, the following extract from the Boston Medical and Surgical Journal.

" We are satisfied that the amount of care bestowed, is, in many instances, wholly insufficient, and that great hazards are frequently incurred from indulging the notion that the subjects of this delirium are altogether harmless. There are two rules in regard to persons in this situation which ought to be rigidly adhered to : one, that they be never suffered to go abroad alone ; and secondly, that they should never be left in the care of female relatives. That both these precautions are often neglected with impunity, we are well aware ; but this by no means disproves the existence of the danger ; and the occurrence, in a single instance, of the horrible consequences above related, affords a warning which we hope will not be disregarded."

Am. Jurist, No. 5. p. 19.

There seems something almost Providential, in visiting on the family of Daniel Nash, the misfortune that might have been averted, by his carrying this writing to the Selectmen, as he was requested to do, on the morning of the fatal occurrence.

It was unnecessary to dwell longer on the physical causes of insanity, and the evidence, *a priori*, of their existence in his unfortunate client. Had we proved none of them, but still have shown moral causes enough ; or had we shown neither, but still have proved plenary indications of insanity at the time of the killing, it would have sufficed. Not only is it difficult to trace out the origin of this disease ; but the causes of it may lie dormant for years : the predisposition may remain till the last sands of life, before any accident may occur, to call them into activity. The seeds of this, as well as of some other disorders, may lie in the system, like some seeds in the earth, many years, before they vegetate and bear baneful fruit.

In the discovery of the truth in this case, we have received no aid from the prisoner. Whether he be now sufficiently recovered to aid us or not, he certainly has shown no disposition to do it : and though his mind is doubtless

in a less excited state, than it was a year ago, never has been witnessed greater apathy and indifference, than has been shown by him, concerning his destiny. Not an individual of this large audience, for the last three days, has evinced so much unconcern : and to all appearance, even now, punishment would have no more effect upon him than on the beasts that perish. He is much more entitled to compassion and protection, than to severity. Even savages, shield their lunatics and idiots, from a principle of superstitious reverence, which seems happily ordained as a substitute for civilization : And to indulge the thought for a moment, that we should be less humane—less charitable, than Indians, would be to stigmatize our people most wrongfully.

Whether, as a cause of insanity, the use of ardent spirit to excess, in some former years, may, or may not, have operated, in some degree, in this case—it is neither legal nor reasonable to enquire.

More than half the male lunaticks, in many of our hospitals, have been made so, chiefly by intemperance. But are they any the less lunaticks ? and are they any the more to be punished for acts, done while lunaticks ?

Such a doctrine would be most novel and dangerous, and inhuman ; and would lead, in every defence of insanity, to an investigation of the cause ; and if it was gaming, bad speculations in trade, wrong religious notions, or intemperance—there would in each be error and crime : and hence, the insanity no defence in law. Push the argument further, and every adviser to any wrong, whether by precept or example, and which wrong caused insanity—would make the adviser also, answerable for every crime, however enormous, committed by the insane person.

In such a complex enquiry, we might all need the pardoning power here, as well as hereafter, to escape condign and capital punishment.

Let us then advert a moment to the special indications of a deranged mind, as laid down by the soundest writers—and afterwards review the evidence, to ascertain if any of them appeared at and about the time of the killing of the deceased.

Should we in the end find nineteen out of twenty of the usual indications existing here, it is in vain to cherish, for a moment, the harsh, the absurd and unlawful notion, that he can be convicted of any crime whatever, whether murder or manslaughter.

Mr. W. here read from Beck the following extracts upon the symptoms of Mental Alienation.

"In many instances, though it is far from being general, pain in the head and throbbing of its arteries precede an attack of insanity."

"They abandon their business and enter into the most extravagant undertakings."

"He becomes angry without any assignable cause—attempts to perform feats of strength, or efforts of agility, which shall strike the beholder with astonishment at his great powers. Many talk incessantly, sometimes in the most boisterous manner, then suddenly lowering the tone, speak softly and whisper."

"The commission which they suppose themselves to receive from some superior being, is given by the ear—they imagine it is constantly repeated. They are thus, they imagine, urged to its performance, and in many cases, murder or self destruction is the unhappy result."

"The *eye* is also diseased. Objects appear bright or fiery, and the organ itself is sparkling and protruded."

"Wakefulness is another symptom, which sometimes precedes all others, and is coeval with pain or uneasiness of the head, or of some other diseased organ; and its degree is determined by the age, habits, situation and original vigorous or feeble constitution of the patient."

"It is this discontent of mind that detaches them from their parents and friends, and causes them to hate most, those whom they previously cherished with the fondest affection."

"The sufferers are pursued day and night by the same ideas and affections, and they give themselves up to these with profound ardour and devotion."

"They often appear reasonable when conversing on subjects beyond the sphere of their delirium, until some external impression suddenly rouses the diseased train."

"Some are gay and highly excited—laugh, talk, and sing—fancy themselves deities, kings, learned and noble."

"Some patients when laboring under this form are excessively irascible, and even without any apparent cause, are suddenly hurried into a violent passion or fury. It is while laboring under this, that they become dangerous to themselves, or to those around them. They will seize any weapon and strike or injure others or themselves."

"An internal sensation is perceived—as a burning heat with pulsation within the skull, previous to this excitement."

"Probably this is a form of insanity as common as any other. It is also said to be less durable, and to end more favorably." 1 *Beck's Med. Jur.* 336 to 343.

Thus, said he, you will see, that the most conspicuous marks of an insane person are, that the ear is often affected and strange noises heard, that the eye is protruded and glistening, that the head suffers severe pains, that the attention cannot long be confined, that business is neglected, that suspicions exist of conspiracies, that antipathies are conceived against those before beloved, that wild fancies are formed, that they believe themselves princes or kings, that they are sleepless, irascible, boisterous, profane, inclined to drink, appear like those inebriated, and, in fine, often prove mischievous to themselves or others.

Now let me ask—Have you not, in reality, been listening to the very substance of the testimony, in the present enquiry?

Has not almost every one, of this large number of indications of insanity, been fully proved within the last two days?

We leave nothing to conjecture—we ask nothing from rumour—we appeal to the evidence delivered in your presence, under the solemnities of an oath to God.

By that it was shown beyond contradiction, that, within a fortnight of the fatal transaction, his complaints were frequent of strange pains in his head—of droppings in it—“of its feeling like a potash kettle”—and his wife applied cold water to it, and fears were expressed lest he should become insane like his father. About the commencement of that fortnight, after severe labour in the woods, he came in and related that an air gun had been shot at him and the ball distinctly heard. Believing falsely, as the ear was disordered, that he heard such a sound, he, on Locke's hypothesis about Lunatics, reasoned correctly from erroneous premises, that it must have been an *air* gun, as he saw no smoke.

Again, early on the 5th of June, after hard labour in the woods, he came in and was possessed of the wild fancy, that a bee was an angel with power to carry him to hell, and returned just at evening to the woods with the avowed purpose of chopping all night. Again, he soon imagines that twelve men from Walpole waylay him in the woods, point their guns at him, but are restrained from firing by his angel. It is his wife too—the being most dear to him—the being to whose devoted fidelity, and untiring affection, he is indebted for his defence and his life, if saved by your verdict—it is his wife, whom he madly believes to have conspired with them to destroy him, and whom, with his affrighted children, he imprisoned the whole of the morning of the fatal day of the killing.

It will not answer to talk of these fancies—these noises heard, and men seen, as mere differences in opinion from mankind at large on religion, on spirits, on other subjects: No. They are the very madness of the moon—the mind diseased.

Again, his delusion about witchcraft might exist theoretically, though such notions have seldom been carried into practice in this country the last fifty years, and never been tolerated by courts or juries since the Salem trials of the 17 Century. But not only to believe in the existence of witches, but their possession of his cat, and that all cats of a black color, were infested the same way; that they must be killed with silver; the offer of money for leave to kill Guillow's, and the actual killing of his own, with such secret loading and care; the darning needle placed over the cat hole, and the axe set up edge ways at the crack of the door: these are circumstances, which might make the most credulous doubt. But his idea of spirits went far

beyond this. The spirit of an Indian, in the shape of a snake, guarded his mine, and the evening before the killing, by the spirit's advice, he carried boards half a mile, nearly, to cover the spirit up. It assumed a still different shape when it directed him to wear a red, instead of a black waistcoat, on the morning of Mrs. Nash's death. He imagined he saw balls of fire in the air blown up from the Infernal regions—that war had broken out with England, and he must march to repel invasion—that he was to pass "*through bloody seas*," and strange as all, for a man in his condition, and of his education—(whatever might happen to others differently situated) conjectures that he was called forthwith to visit and convert, the Heathen in the north east.

In the very midst of all this, the very day before the killing, he fancies he has obtained a new wife, and offers up ardent prayers for her welfare. His eyes assume a wild and glassy appearance. He not only sees gold and silver in common gravel, and talks of importing from Europe refiners and machinery to work his mine—which some sane men might be deluded to think of—but he madly sees the gold and silver spread over his rocks and buildings, and even cross into the adjoining farm of his neighbours.

There is, to be sure, some method in his madness like Hamlet's, for he reasons naturally enough on false principles, and avows, that under such wealth he has become what the insane Lear once was—a very King.

The morning of the accident he fastens his cane into the block of wood, and carries it about in triumph. He imagines himself a Prince, and proclaims that he has conquered, and forthwith there shall be peace.

Add to all this, gentlemen, his peculiar irritableness—his refusal at times to answer common questions—his profanity at one moment—his loud singing and prayers at another—his unusual rapidity in walking—his strange manner of carrying his cane and hat—his entire neglect of business—his extraordinary appearance, throughout, beyond any thing before seen, and testified to by one of the most intelligent Witnesses for the State; and you have a combination and a mass of circumstances utterly irreconcilable with perfect sanity of mind. There can be no mistake about this. For, after almost a year and a half, you yourselves see him, even now, before you, with an eye, a complexion, and a manner, which mark strongly the disease, and one of which Haslam states that he found in over 205, out of 265, patients in Bethlem Hospital.

(*Cyclopedia, Art. Mental Derangement.*)

But, gentlemen, could a doubt remain, the absence of all

moral motive to kill the deceased—of any motive to influence a sane mind, is decisive, that he did the act under the dominion of a different and incontrollable power. He read an extract taken from Marc, an eminent medical jurist in France.

"Moreover, the moral circumstances which precede or accompany crimes, generally shew whether they are the result of criminal intentions, or derangement of intellect; that is to say, that in a real criminal there is always some motive of personal interest, by which the moral cause of his act may be known. Thus a homicide, followed by robbery, cannot be attributed to mania without delirium"

Vide, 1 Beck's Med. Jur. 372.

Here, however, he robbed the unfortunate woman of nothing. He was to gain nothing by her death, in a pecuniary view, by will or inheritance, as in the late assassination in a neighboring State. He had no quarrel to provoke him, no injury to revenge. They lived in the same neighbourhood, in perfect friendship, and worshipped in the same religious society, with united hearts and tongues.

More than all this, to shew that the very essence of madness is alone apparent; the deed was committed in publick, before witness, without any attempt to escape, leaving a part of the gun, well known, on the head of the deceased; retaining the residue in his hand when taken, hallooing after, and threatening to kill the little girl likewise; frothing at his mouth after arrested; and his whole previous character marked with industry, mildness, and public professions of religion.

It would be an insult to your understandings to linger longer on the defence on the ground of insanity, as applicable to the general charge of murder.

But it has been suggested, that the prisoner might be convicted of manslaughter, though not of murder; and that this insanity, if caused by drunkenness, immediate or remote, would not exonerate him from the charge of either crime.

Give me leave, however, to say, and to demonstrate, that the sane mind is just as indispensable to the guilt, the wickedness of one crime as the other, and that he cannot, therefore, be convicted of manslaughter.

CHIEF JUSTICE RICHARDSON here remarked, that the Court had considered that subject, and he thought that the Jury could not convict of any thing but murder; that if the insanity was such as to exonerate the prisoner from the charge of murder, he could not be convicted of manslaughter.

Mr. W. said he was happy to hear, that the Court had come to that conclusion—but as the jury had the law in

their hands, he would merely remark farther, that a lunatick could not be convicted of manslaughter, because there was not the evil heart and mind, and the knowledge necessary to constitute the crime. He did not believe that the good sense of the jury would, for a moment, tolerate the position, that a lunatick could be punished to any extent, for an act committed under the immediate influence of derangement.

The only remaining position, on which a conviction can be properly asked, is, that the deed was committed when in a state of intoxication.

We meet this in the first instance, on the evidence, and not on evil report, by a categorical denial of the fact.

The testimony on both sides shows, that he drank nothing whatever on Saturday, the day of the killing—nothing on Friday, Thursday, and indeed for a whole week previous, that any body can pretend would be likely to produce the least intoxication.

But if he had, and was deranged before he began to drink—the jury could not convict him. Because drinking to excess is often the consequence of insanity—the want of due control over one's faculties—and would here be the effect, rather than the cause, of his state of mind. Insane people may become intoxicated, also, from accident or inclination, as well as other people, and while intoxicated, may do mischief. But if either the intoxication or the mischief occurred from the *insanity*, it would be absurd to punish them.

But in the most explicit language, we deny the fact of the least intoxication at the time of the supposed offence—we deny its existence for more than a week previous—and we deny, that it had occurred for many months before, except in a single instance after he had become deranged.

In this denial, we are not only fortified, by no proof to the contrary having been adduced by the State, but by positive proof, adduced by ourselves, of his sobriety, and by the decisive circumstance of persons being now present, from many miles around him in all directions, and not one of them being able to implicate him beyond what we have stated. It is not left to conjecture—they produce every body from whom they could show it. Even for years previous, his habits of drinking have by no means been proved to be those of a drunkard. Only some half dozen instances in his whole life, and most of those, trainings, musters, and such occasions, when he has been proved intoxicated by spirit, and only once, the year previous, by cider.

Mr W. here recapitulated the testimony of each witness as to his

condition for eight days before the killing, and shewed that on that day neither rum nor cider had been drank—on the day before only two glasses of wine, on the second day before only one glass of rum and one draught of cider—on the third day nothing—on the fourth nothing, unless a gill of rum testified to by his son—on the fifth, sixth and seventh, nothing, unless perhaps a single draught of cider on the fifth—and on the eighth day previous, after coming from the woods and hard labour, and sustaining a fall from the log and evincing great wildness, drinking the gin, sworn to by Day and Thompson.

He contended that the drinking of the gin was the effect, and not the cause, of his insanity. He had evinced a sadly bewildered mind for two days previous, as testified to by Misses Bingham and Hudson—and for two months or more previous, is not proved to have used either spirit, wine or cider.

In this way the whole charge as to the killing, having occurred while in a state of intoxication—or while the fumes of liquor remained in his head—vanishes into thin air.

Almost as little foundation is there, for the last position which we have heard advanced to sustain the charge. That excessive drinking long before the deed, had caused the insanity: and in that event that he should be answerable, especially, if he knew such drinking was likely to derange him.

We are not here or elsewhere the apologists of intemperance. We rejoice at the improved and improving habits of our community on this subject. We would lend, rather than oppose, our feeble hand and voice to the cause of reformation. And if an individual under the immediate influence of liquor, and not otherwise insane, commits mischief, we say, let him respond fully to the violated laws. So if he drinks or takes opium, like the irritated Malays, with a view “to run a muck,” and do all possible mischief—let him be made answerable.

But we are, it is hoped, neither fanaticks, inquisitors, or stoicks, and would never, in a human tribunal, attempt the vain task, of tracing up to first moral causes the origin of any crime, and punishing the remote and ignorant accessories to any small sin, for all the heinous consequences in the farthest degree, and till the end of time, and by the highest penalties mortal power can wield.

No human tribunal can thus administer the laws, but must leave all causes and consequences, beyond the most immediate, to the scrutiny, wisdom and mercy, of that being, who cannot err in judgment.

He then proceeded to comment on the testimony as bearing on

this question of intoxication at this, and former periods of his life.

He added, that from all this evidence it was manifest, that sufficient excessive drinking had not been shown, to produce *mania a potu*, or any other *mania*. On the contrary, the probability is infinitely greater, that the constitutional predisposition to insanity—the epileptic fits—the falls and his general temperament of body, having made him more easily to be deranged, he became so from the immediate circumstance of his excessive labor in the woods, about two weeks prior to the killing. Then reason was first seen to be dethroned—then his imagination and actions first became bewildered and wild—and then his opinions and conduct, became rather the proper subjects of compassion, than of censure and vengeance.

But he protested against the position of the state's counsel in point of law ; if the insanity had been produced by habits of intemperance, provided the actual intoxication had entirely ceased, at the time of the killing.

(Mr W. here referred to the case of Drew in the Circuit Court of the United States (See note C) and read from the Jurist the following extracts, from medical writers, there cited.)

The truth is, that the immunity from punishment results from the insanity itself, and not from the nature of the causes which produced it.

Western Jour. of Med. and Phys. Sciences.

Would it be said that the action was not excused by his insanity because he brought that insanity on himself? Such an argument never could be listened to with patience either within a Court of Justice or without it—By the late reports of mad-houses in England, it will be seen, that a very considerable proportion of their inmates have become so from this indulgence. All these, then, are moral agents, and responsible for the crimes they perpetrate, &c.—*Boston Med. and Surg. Journal. Am. Jur. No. 5, p. 15—17.*

But as the facts here proved, had already been shown not to give rise to any question on these points, he said he should dismiss them without farther comment. He believed all would now agree, that the prisoner was insane at the time of the fatal transaction. That time, and that alone, was the eventful moment, on which all the other testimony was to bear. He believed most, if not all, would concur, that the cause of that insanity was immaterial, unless it was the insanity of recent intoxication. He believed that any such cause was rebutted by the most decisive evidence. His condition now, and since the deed, had not been gone into, by physicians, or other witnesses, because that inquiry had been objected to as irrelevant—we have been ready to meet it, even at this trial : But should the Jury acquit him, it will then become clearly material and relevant, whenever he, or his friends, apply to have him discharged from custody—and the jury in acquitting him, will have the satisfaction to reflect, that

he cannot be set at large till the Court are convinced of his having become perfectly sane.

He will be kept, without undeserved stigma to him or his connexions, as there would be, if sent to the State prison for even manslaughter. They will have the satisfaction to reflect, that no mistake will be committed, irremediable, and affecting the life of a fellow being.

They will sustain those sound principles of law, which construe all presumptions favorably to the accused, and which inculcate an entire acquittal, whenever reasonable doubts interpose, rather than hurry to Eternity a fellow being, who may have had, at the time of the accident, no more control over his faculties, than over the roll of a cataract, or the speed of a tornado.

We repeat our entreaties, that you beware of a mistake where no correction in time can restore life improperly taken. Beware of an example, which how soon, God only knows, may be applied to yourselves, or families, or friends.

None of us can boast security against the attacks of the most subtle and deplorable malady, of a mind diseased—none of us have a bond of fate, that soon overwhelmed by its inscrutable influences, we may not become the instruments of death, to some of our race. The most learned cannot always discover its approaches, or escape its calamities. The most lofty, and powerful, and good, as well as the humblest tenant of the lowest shed, are equally its victims—from George the III. on his throne, delivered over to his keepers—from the sagacious and witty Swift, in a mad-house—from the beautiful poet, Collins, with a mind in ruins—from the amiable and virtuous Cowper, attempting suicide, under its bitter influence—to the most ignorant and stupid inmate of a Lunatic Asylum.

Let me conjure you then, as you value humanity or life—a good name here or happiness hereafter, do not, in a case of any doubt as to the existence of this deplorable disease—add suffering to suffering—calamity to calamity—hasten away, from time and hope, its wretched victim—and make him, and all that hold him dear, martyrs to any publick excitement, or popular prejudice, however deep or wide—let it not be forgotten, that you yourselves have much at stake, in this decision, as well as he : for, as you are governed by the law and the evidence alone, or by other considerations, you commit perjury of your official oaths, and must answer hereafter, if not here, at the same tribunal with the miserable prisoner before you. But my confidence is unshaken, that you will decide as your solemn duties demand, and that so deciding, he must be acquitted.

Such a course, and such a result, will leave you to sleep quietly on your pillows—and will be approved, it is hoped, when you again meet this unfortunate man, as meet him soon we all must, at the bar of a merciful God.

MR. CHAMBERLAIN, rose, and observed in substance, that he was aware of the responsibility of the situation, in which he was placed. He had last evening proposed, to submit the case, without argument; and he was willing now to submit it, under the charge of the Court. He could not hope for a conviction, against the law, or without evidence.

He would state, in justification of the course which had been pursued, that, from all the inquiry he could make, in the neighborhood of the transaction, and up to the time of trial, he had no reason to suppose, that the prisoner was insane. He could not, of course, know the evidence which would be introduced, on the part of the defence. The circumstances, as described to him, were such, that he deemed it his duty, to put the prisoner on trial; but he could have no wish to press a conviction, against the intimations of the Court, and should cheerfully leave the case with the jury, under their direction.

CHIEF JUSTICE RICHARDSON, charged the Jury.

They had now, he said, the whole of the case before them. The prisoner at the bar, stood charged with the murder of Matilda Nash. The time, and place, and mode of giving the mortal wound, were stated in the indictment, and need not be repeated. To this charge he had pleaded, that he was not guilty; and he could not be safely convicted, until all reasonable doubts on the subject were removed. This was a contest between the state and an individual; and the question of guilt, or innocence, was not to be decided, like a matter of fact in a civil cause, between two individuals, by comparing the evidence on both sides, and then determining the cause in favor of the one side, or the other, as the evidence might seem on the whole, to preponderate a little on this side, or that. It was not enough, that the evidence might have rendered it probable, in their minds, that the prisoner was guilty. The state had no claim to their verdict in its favor, until they were satisfied, beyond all reasonable doubt, that he was guilty. It was right, and just, that it should be so. For, if the law were otherwise, a contest with the state, in a criminal cause, would often be, even to an innocent man, a most unequal, and dangerous contest.

All the ground, on which it had been supposed this prosecution might be sustained, had been fully and ably explained to them ; and all the evidence which could be found to support it, had been diligently collected, and laid before them, in its proper order. The state's counsel had faithfully and ably performed the duties that devolved upon them, and every thing had been done, in behalf of the state, which justice seemed to require. Nor had less talent and diligence been exerted in behalf of the prisoner. The grounds of the defence had been stated, and explained with great ability ; and the bearing of the evidence upon those grounds, had been illustrated with uncommon force and eloquence. Much time had been consumed in the investigation of the facts ; but it was to be hoped that it had not been consumed in vain. It was proper that the transaction should be fully examined. The tragical death of the deceased, was calculated to excite deep feeling in the community ; and the people in the county, had a right to expect a complete investigation of the subject, that the whole truth might be known, and the law in such cases, and the grounds on which it rests, might be fully understood.

There were certain facts in the case, about which there was no controversy. It was not disputed, that on the 13th June, 1829, the deceased went to the house of the prisoner, in company with the little girl, who had been upon the stand as a witness ; that she found the prisoner lying upon a bed, and upon entering the house, civilly and kindly asked him how he did ; that upon this, he immediately, and without any provocation, threatened to kill her, and, taking his gun, pursued her ; that, very soon overtaking her, he knocked her down with the gun, and struck her once when she was down ; that he then went in pursuit of the little girl, but being unable to come up to her, he returned to the deceased, and inflicted other wounds ; and left her in the situation, which the witnesses have described. Thus far there was no dispute. It was conceded in behalf of the prisoner, that in this manner the deed was done.

If the prisoner was, at the time, a rational being, having the use of his understanding and intellect, this was as clear a case of murder, as any case which had happened since the creation of the world. The wounds given were such, as must inevitably produce death, and they were given without any provocation, whatever. If the prisoner was capable of deliberation, the deed must be taken to have been deliberately and willfully done, and to have had every quality that goes to establish murder.

The inquiry was then reduced to this ; had he the use of his reason when the deed was done ? If he had, he was guilty of murder. If he had not, he was not answerable for his acts. It was reason, which rendered man an accountable being. It was absurd to suppose, that a man without reason, could be answerable for his conduct in a court of justice.

There were cases, in which a prisoner might, upon an indictment for murder, be acquitted of the murder, and found guilty of manslaughter. But after a most attentive consideration of the subject, the Court were of opinion, that, if any crime had been committed, it was murder. If the prisoner had his reason at the time, the crime was murder ; if he had not, he could commit no crime.

There were cases, without doubt, in which a man might be accountable for his conduct, while deprived of his reason ; but those were cases, where he voluntarily surrendered his reason, by becoming intoxicated. To what extent a man was answerable for his acts, while in a state of actual intoxication, it was unnecessary to inquire, in this case, because there was no direct evidence, that the prisoner had drank to excess on the day, when the act was done. There was evidence, that he was sometimes intemperate, but it did not appear, that he was very frequently so. There was no evidence, upon which it could be safely pronounced, that he was then intoxicated. It was possible that he was so. But in a case like this, nothing must be presumed against the prisoner. His guilt must be established by the evidence, and not by presumptions and conjectures.

It sometimes happened, that by a long course of intemperance, a man's understanding became totally prostrated, so that, when the fumes of the liquor had evaporated, the light of reason did not return, but the mind remained in permanent derangement and darkness ; and in this case it was very possible that if the prisoner was deranged, the misfortune might have been wholly caused, or at least greatly increased by intemperate habits. But the Court were of opinion that if his intellect was actually deranged at the time, so that he had not the use of his reason when free from liquor, he could not be considered as accountable, although he might have been deprived of his reason by his intemperate habits. When reason was once actually lost, the man ceased to be accountable, although it might have been lost by his misconduct.

The question then, said the Chief Justice, is simply, was the prisoner of sane mind, when the act was done ?

We could know nothing as to the state of a man's mind, except from what he says, and from what he does. In order to determine the question, then, which this case pre-

sented, they must examine the conduct and conversation of the prisoner, as disclosed in the evidence.

The first thing to be considered, was the nature of the deed, and the manner in which it was done.

The deceased, was far advanced in years. There was no evidence of any previous misunderstanding, between her and the prisoner. When she approached him, she addressed him kindly. No cause, no motive was shown, or even conjectured, why, if he had his reason, he should have wished to injure the deceased. Yet it was clear, that without any hesitation, he perpetrated the horrid deed. Nor was this all. He then pursued the little girl, who had said nothing, who had done nothing but fly from him, apparently for the purpose of taking her life. And further, all this was done in open day, in a place surrounded with inhabitants; and when the deed was done, no reasonable plan of escape was adopted. Such was the case, disclosed by the evidence on the part of the government. Now take the cause as thus proved, could it be supposed that the prisoner had his reason? Was there no doubt upon the subject? Would it be safe to convict him upon this evidence and let him be executed, if there were nothing more in this case? Was it credible, that any man in his senses, without motive, without provocation, without any inducement, that could be imagined, should, in the face of day, have done such a deed? If he had his senses, he must have known the consequences. He must have known, that, by taking the life of the deceased, he forfeited his own life. Yet this was done without any hesitation, and without any attempt to conceal the deed. It seemed to the Court, that this view of the subject merited their particular consideration. If this was all, he should recommend to them to pause. But this was not all. In the next place, the previous conduct and conversation of the prisoner, must be considered.

It was said, there is, in some families, a hereditary predisposition to insanity. This was probably true. Common observation must have shown them, that some families were remarkable for strength and vigour of intellect, and others, for the want of it. It sometimes happened that several in the same family were idiots, and probably it was not uncommon, that more than one became deranged. There was evidence in this case, that tended to prove that the mind of the father of the prisoner had been, at times, disordered; and that one of his sisters had not, at all times, had a well balanced understanding. This evidence, if it stood alone, would be entitled to very little weight; but it might deserve some consideration, in connexion with the rest of the testimony.

There was evidence that he had had falls, by which his

head had been injured, and that he had had fits. These circumstances alone, could not probably be deemed very material, but might be entitled, perhaps, to some weight, under the circumstances.

The impressions which his wife and Guillow had, as to the state of his mind, on the day before the deed was done, deserved consideration. It seemed, from the letter which was written to the selectmen of the town, and from the testimony of Guillow, that they supposed him to be deranged. If the jury were satisfied, that such were their impressions at that time, it was entitled to great weight, for they were in a situation, which enabled them to judge.

His views and conceptions of things before the time, must be also considered. Some of his notions must be considered as very singular, in a sane man. The fancies, that a ball from a gun had whizzed by his head, although no report of the gun had been heard—that a bee, that came into the room, was his angel, and would fly away with him—that people from Walpole, at the instigation of his wife, were plotting against him, but he was protected by his guardian angel—that the black cat was bewitched, and must be killed in secret, and with silver—that the snake in the mine, was the spirit of an Indian, killed on the spot, to protect, by enchantment, the treasures that lay hidden there—and that he was commanded by his angel, to go and cover the mine at night, all indicated an intellect greatly disordered. And it seemed, that while these imaginations were floating in his mind, he complained of his head, and of strange and unusual sensations in it.

The manner in which he spoke of his mine, must also be considered. The evidence was, that he had a notion, not only that there was gold and silver there, but that it was spreading over, and gilding every thing around him; his farm, his house, the trees, and even extending itself to the farms of his neighbors. Many men, in their senses, had strange notions sometimes on the subject of mines; but what man, in his right mind, ever had conceptions like those of the prisoner? If the jury believed that he talked in the manner the witnesses state, they must judge for themselves, what must have been the state of his mind at the time.

There was, he said, in the case, other evidence tending to prove further notions, expressed by the prisoner, which were equally singular. Such were his declarations, that he must go and preach to the heathen, in the north-east—that he must pass through seas of blood—that he had a new wife, and that there was war. There was, also, the circumstance, that he in one instance, changed his jacket, declaring that he did it, at the suggestion of his angel. These circumstances must all be weighed.

This, he observed, was a general view of the evidence upon which they must ground their opinion of his sanity. They were the judges both of the law and the fact, and must exercise their own judgment upon the case.

Their verdict must be in one of three ways. They must either find him guilty generally, in which case he would probably be executed ; or not guilty of murder, but guilty of manslaughter, in which case he must be punished by confinement to hard labor in the State's Prison probably for life, or not guilty generally by reason of insanity, in which case he would be confined in the county goal until he could be safely liberated. With these remarks, he submitted the cause to their decision.

The jury retired and the Court *adjourned*.—On the opening of the Court in the afternoon, the jury returned a verdict of NOT GUILTY, and to the enquiry of the Court upon what ground they acquitted the prisoner, the Foreman replied, "On the ground of his Insanity."—It was thereupon "Ordered by the Court, that the said Daniel H. Corey be recommitted, and remain in confinement until the future order of this Court."*

NOTES.

(Note A, page 5.)

The following extracts are from the report of the trial of Amos Farnald for murder, Strafford County, Feb. Term, 1825, after the list of jurors had been called.

"*Mason*, [for the prisoner.] For many months past, reports have been industriously circulated throughout the community, respecting the conduct of the defendant, which possibly may have reached the ears of the jurors. All I wish to secure for the defendant is, a fair and impartial trial. It is my duty in his behalf, to make this suggestion to the Court, that the jurors may be inquired of whether those reports have reached their ears. I do not refer to any individual among the jurors in particular ; but so much excitement has been created by newspaper paragraphs, and other means, that it becomes necessary to adopt every precaution to obtain an unprejudiced jury. I wish the question might be asked the jurors.

RICHARDSON, C. J. Certainly—the course is very proper under the circumstances.

The first juror called to be sworn, *Joseph B. Smith*, was enquired of by the Chief Justice, whether he had heard any reports respecting the guilt or the innocence of the prisoner ? *Ans.* I have.

Mason. Have you formed any opinion respecting the guilt or innocence of the prisoner upon those reports ?

Ans. The reports I have heard have been unfavorable to the prisoner.

Woodbury. [for the State.] As this is a case which, from its peculiar nature has given rise to much discussion, it will be very difficult to find a jury in this county who have not heard of it.

Mason. We will go through the list and see if we can find an unexceptionable juror among them.

Joseph Tuttle, affirmed.

Woodbury. On the trial of Emerson in this county, in 1817, it was ruled by the Court, that inquiry might be made of a juror, whether he entertained religious scruples of the propriety of capital punishments in any case. I wish that question might be asked of this juror.

RICHARDSON, C. J. The juror may be passed by for the present.

The number of jurors, which the prisoner was legally entitled to challenge without cause, having been called, his counsel expressed a willingness that out of the remainder of the list, the following jurors might be empanelled, viz :—Daniel Drew, Benjamin Wiggin, James Chesley, James Farnald, John Wentworth, and Abner Clement, who were ordered to be called and sworn accordingly."—*Trial of Farnald*, p. 5—7.

* See note E.

(Note B, page 10.)

That part of the trial of Furnald which was referred to by the reporter, on taking the exception to the sufficiency of the description of the witness' place of abode, is as follows, viz :—

“*Susan Sanborn called and sworn.*”

Mason. We who have been assigned as counsel for the unfortunate prisoner at the bar, feel it to be our duty to adopt every means to secure him an impartial trial. We therefore, are bound to take every legal exception to the evidence offered against him in behalf of the State.”

The objection we make to the examination of this witness is, that the statute, regulating capital trials, provides, that a list of the witnesses to be used on the trial, with the places of their abode, shall be delivered to the prisoner forty eight hours before trial. There was a list of the witnesses in this case served on the defendants, in which this witness is described as “*Susan Sanborn of do.*” I contend that this description of the place of abode of the witness does not comply with the requisitions of the statute. The rules laid down for the protection of individuals in the situation of this unfortunate man, are rigidly adhered to in all courts in England, and in this country. It is distinctly laid down in the late and valuable work of Mr. Chitty on Criminal Law, that in those cases where a list is necessary by the English law, the mere misspelling of a name is fatal. I shall not contend but we might understand what is intended to be conveyed in this case by the mark “*do.*” But surely an innovation of this sort, in a criminal case, will not be permitted by this court for the first time in a case of this importance. In this country, we have followed in our statutes all the severity of the English common law in favor of the rights of the accused. There can be no doubt but this loose mode of designating the residence of the witness would be insufficient in England. And every exception which the party is legally entitled to we feel bound to take.

Woodbury. In the list of witnesses furnished in behalf of the State, there are several individuals residing in the town of Gilmanton. The person whose name precedes that of this witness in the list, is stated to be of Gilmanton, and the residence of this witness is referred to the same place by the abbreviation excepted to. Such abbreviations are in constant use in all the proceedings in courts of justice. I venture to say there is not an account annexed to a writ on the files of this Court, without this very abbreviation. *Plf.* is almost universally used to denote the plaintiff; and *A. D.* has been settled *seriatim* to be a sufficient description of the year of our Lord.

Mason. What might be considered sufficient in civil process, which is amendable, is not the question before the Court. The language of the statute on this subject is express—“and the places of their abode.” Is there any thing in the list in reference to this witness to satisfy this requisition? The rule is of the strictest character in favor of the defendant. I should not contend that the mere misspelling of a name, by which no one could be misled would be a sufficient objection. But here is no description whatever. There is, to be sure a mark “*do.*” which perhaps a merchant might understand the meaning of—so he could understand a mere dot to mean a reference. But the question is not been what might be understood—it is whether the statute has been pursued, that is the only question before the Court. And in behalf of the prisoner we rest upon his strict rights.

RICHARDSON C. J. A majority of the Court entertain strong doubts, whether the residence of this witness is sufficiently described in the list furnished the prisoner, according to the requisition of the statute. The object of the Legislature in interposing these guards and formalities is apparent—it is to protect an humble individual in the unequal contest with the State. It is the duty of Courts therefore to hold the rule with strictness in his favor. Perhaps the best and most convenient course in this case, will be to overrule the exception and save the questions for future consideration if necessary.”

Trial of Furnald, p. 18—21.

Since the trial, the reporter has been furnished with the following note, by Mr Woodbury.

“24 State Trials, apx. (Edition by Howell.) In Hardy's trial, the list of witnesses contains the name of the place, and county, and in some cases of the parish of their residence, with the addition of their degree.”

(Note C, page 45.)

"Insanity produced by Intemperance"

"No principle in criminal law is more universally admitted than that the insane man is not responsible for his acts ; that guilt does not attach to the individual who is unconscious of his deeds ; that it is the criminal mind, the wicked intent, which makes him the subject of punishment, and yet this principle must be recieved with some qualification. Voluntary insanity, brought on by indulgence and excess, is no excuse for crime. A homicide committed in the phrenzy of intoxication, subjects the offender to punishment. And here insanity and its cause must not be confounded. The law discriminates between the delirium of intoxication and the insanity which it sometimes produces. While the drunkenness continues, the person under its influence is responsible as a moral agent, though reason in the meantime has lost her dominion ; but when the intoxication ceases, if insanity immediately follow as a consequence of the vice, he is in the eye of criminal justice, no longer amenable for his acts. This legal distinction in the criminality of acts in relation to insanity and its causes, is exemplified in cases of *delirium tremens*, a species of madness which often deprives the sufferer of the power of distinguishing between right and wrong, and which medical writers attribute to frequent intoxication, or the sudden cessation from habitual drinking, or to the combined effect of both upon the system. But however just the distinction, it does not appear to have been judiciously settled before the decision of Justice Strong and Davis, in a late case, which it is the design of these few preliminary remarks to introduce."

"At the May term, A. D. 1828, of the Circuit Court of the United States, Alexander Drew, commander of the whaling ship John Jay, was indicted and tried for the murder of his second mate, Charles F. Clark, while upon the high seas. It appeared in evidence that previously to the voyage, during which the fatal act took place, Drew had sustained a fair character, and was much respected in the town of Nantucket, where he belonged. It was proved that he was a man of humane and benevolent disposition, but that for several months he had been addicted to the use of ardent spirits, and for weeks during the voyage had drunk to excess ; that he made a resolution to reform, and suddenly abstaining from drinking, he was seized with the delirium tremens, and that while under the influence of the disease he made an attack upon Clark, and gave him the stab of which he afterwards died.

"The first witness who testified in the case was George Galloway, the cooper on board the ship. He stated that he joined the ship in the Pacific Ocean ; that he found Capt. Drew to be an amiable man, kind to his crew and attentive to his business, but that he often indulged to excess in spirituous liquors. During the latter part of August, 1827, he had been in the habit of drinking very freely ; that they spoke a ship from which Capt. Drew obtained a keg of liquor, and after he returned to his own vessel he drunk until he became stupified ; that soon after he recovered a little from his intoxication, and ordered the keg with its contents to be thrown overboard, and it was accordingly done. There being now no more liquor on board of the ship, and none to be procured, Capt. Drew, in two or three days discovered signs of derangement. He could not sleep, had no appetite, thought the crew had conspired to kill him, expressed great fears of an Indian who belonged to the ship, called him by name when he was not present, begged he would not kill him, saying to himself he would not drink any more rum. Sometimes he would sing obscene songs and sometimes hymns, would be found alternately praying and swearing. In the night of the 31st of August, Drew came on deck and attempted to jump overboard, and when the witness His caught hold of him he sunk down trembling and appeared to be very weak. appearance the next morning the witness described to be that of a foolish person.

"At seven o'clock in the morning of the first of September the witness, Capt. Drew, and others, were at breakfast in the cabin, when Drew suddenly left the table and appeared to conceal something under his jacket which was on the transom in another part of the cabin. He immediately turned round to Mr Clark and requested him to go upon deck ; the reply of Clark was ' when I have done my breakfast, sir.' Drew said 'go upon deck, or I will help you,' and immediately took from the transom a knife which had been covered over by his jacket, and before another word was spoken by either, he stabbed Clark

in the right side of his breast. Clark was rising from his chair at the time the knife struck him and immediately fell upon the floor. He afterwards rose up and went upon deck alone—As the witness left the cabin, Drew cocked his pistol, and pointed it at him, and snapped it but it missed fire. Capt. Drew followed them upon deck, and addressing the chief mate said, "Mr Coffin, in twenty-four hours from this, the ship shall go ashore."—He was then seized, bound hand and foot, and a guard was stationed over him. His whole demeanor, for some time after was that of an insane person. He would frequently call upon persons who were not on board, and who never had connexion with the ship. Some weeks after, when Drew first appeared to be in his right mind, he was informed of the death of Clark and its cause, he replied that he knew nothing about it, that when he awoke he found himself handcuffed, and that it all appeared to him like a dream. There had not been for months any quarrel or high words between Clark and Capt. Drew.

"The second witness was Moses Coffin, the first mate of the ship. Coffin stated that Capt. Drew had been in the habit of drinking, and that it was by the order of Drew that the keg of spirits was thrown overboard. He recounted numerous instances in addition to those before stated, of frivolous complaints made by Drew of his countermanding his orders, of his fear of being left alone, and his conversation with the imaginary beings by whom he supposed himself surrounded, all going to prove physical weakness and alienation of mind. Though familiar with his habits, the witness had not, before this affair supposed him insane.

"With regard to Clark, the witness dressed his wound and took care of him. Two physicians at a Spanish port, which they reached soon after, gave it as their opinion that it was not dangerous, and that it would be well in a few days; but Clark himself had said, in describing his complaint to witness, that the wound caused an internal flow of blood. It healed externally before Clark expired.

"At this stage of the proceeding, the Court asked the District Attorney if he expected to change the posture of the case. He admitted that unless upon the facts stated, the Court were of opinion that this insanity, brought on by the antecedent drunkenness constituted no defence for the act, he could not expect success in the prosecution. After some consultation the opinion of the Court was delivered as follows:—

"**STORY J.** We are of opinion that the indictment upon these admitted facts cannot be maintained. The prisoner was unquestionably insane at the time of committing the offence. And the question made at the bar is, whether insanity whose remote cause is habitual drunkenness, is or is not an excuse in a Court of law for a homicide committed by the party, while so insane, but not at the time intoxicated or under the influence of liquor. We are clearly of opinion that insanity is a competent excuse in such a case. In general, insanity is an excuse for the commission of any crime, because the party has not the possession of his reason which includes responsibility. An exception is when the crime is committed by a party while in a fit of intoxication, the law not permitting a man to avail himself of the excuse of his own gross sin and misconduct, to shelter himself from the legal consequences of such crime. But the crime must take place and be the immediate result of the fit of intoxication, and while it lasts, and not as in this case a remote consequence, superinduced by the antecedent exhaustion of the party, arising from gross and habitual drunkenness. However criminal, in a moral point of view, such an indulgence is, and however justly a party may be responsible for his acts arising from it to Almighty God, human tribunals are generally restricted from punishing them, since they are not the acts of a reasonable being. Had the crime been committed while Drew was in a fit of intoxication he would have been liable to be convicted of murder. As he was not then intoxicated, but merely insane from an abstinence from liquor, he cannot be pronounced guilty of the offence. The law looks to the immediate, and not to the remote cause, to the actual state of the party, and not to the cause which produced it. Many species of insanity arise remotely from what, in a moral view, is a criminal neglect or fault of the party, as from religious melancholy, undue exposure, extravagant pride, ambition, &c. &c. Yet such insanity has always been deemed a sufficient excuse for any crime done under its influence."

"The jury without retiring from their seats, returned a verdict of *not guilty*. The case was conducted for the government by *George Blake, Esq.* District

Attorney ; for the prisoner by *Daniel Davis* and *Francis Bassett*, Esquires." *American Jurist*, No. 5. p. 6.

(Note D, p. 51.)

On the trial of Fernald before cited, Dr. John Durkee was called as a witness. After testifying to the appearances of the body on dissection, he stated that he "could not decide as to the cause of the death of the child from the dissection alone."

He was then asked by the State's counsel—

"From what has been testified, as to the treatment of this child, connected with the appearances presented on dissection, have you any reason to state the cause of his death?"

"*Mason* objected to the question. He contended that to draw inferences from facts testified to, was exclusively the province of the jury."

"*Walker*. Unless evidence of this kind is admitted no medical man can throw light upon a case of this nature. It is the uniform practice to call them as men of skill to state their opinion upon the facts testified to in cases of homicide. It would be impossible to make out a case from circumstantial testimony alone, without such opinions."

"*Mason*. I should like to see an authority for this course. It strikes me as an entire novelty. If the physician should answer the question as to the dissection, merely, he would undoubtedly say that there are half a dozen diseases to which the human system is subject, which would present precisely the same appearances after death as were found in this case. But the question proposed, if I understand its bearing, is, whether upon the whole evidence before the jury, this child was starved. Is this a matter of science? Certainly any other man is as capable of forming an opinion, and of judging accurately upon the weight of testimony as a medical man. If you want science, you may ask how long it will take to starve a man to death. But do not ask as a matter within the province of a medical man, what weight of proof in this case, bears upon the charge laid in the indictment. That consideration is entirely for the jury."

"*RICHARDSON, C. J.* We are all of opinion that the question put to the witness as to the evidence in the case generally is not proper. A physician may be asked his opinion, as a man of skill, as to the appearances testified to by any particular witness, or as to the effect of any particular course of treatment testified to. He cannot be called on to draw inferences upon the whole case."

Trial of Fernald, 49.

(Note E, p. 76.)

The following sections are from a statute of the State passed July 2, 1822.

SECT. 1. *Be it enacted by the Senate and House of Representatives in General Court convened*, That whenever any person, who may have been arrested and in custody or in prison, to answer for any crime or crimes, offence or offences, before the superior court of judicature, shall be acquitted thereof by the petit jury, or shall not be indicted by the grand jury, by reason of the insanity or mental derangement of such person, and the discharge or going at large of such person shall be deemed by the same court to be dangerous to the safety of the citizens, or the peace of the state, the said court be and hereby is authorized and empowered to commit such person to prison, there to be detained till he or she be restored to his or her right mind, or otherwise delivered by due course of law. And every person so committed shall be kept at his or her own expense, if he or she have estate sufficient for that purpose ; otherwise at the charge of the county in which such person is committed to prison.

SECT. 2 *And be it further enacted*, That whenever the grand jury upon any inquiry which they may hereafter make as to the commission of any crime or offence by any person, shall omit to find a bill for the cause aforesaid it shall be the duty of such jury to certify the same to the said court. And whenever the petit jury upon the general issue of not guilty shall acquit any person for the cause aforesaid, it shall be the duty of such jury, in giving in their verdict of not guilty, to state it was for such cause.

ERRATA. Page 41, 9th line from top, for *more* read "*none*."

Page 43, 6th line from bottom, for *of the* election, read "*after*" election.

Page 45, for *Buck's Med. Jur.*, read "*Beck's Med. Jur.*"

Page 78, 22d line from top, for *Justice Strong and Davis*, read "*Justices Story and Davis*."

Same page, 9th and 10th lines from bottom, transpose *His*, in 10th line, to the beginning of 9th line, that it may read "*His appearance*."

