

The trial of Mrs. Ellen Byrne for the murder of Mr. Augustine Byrne, her husband : at the Commission Court, Dublin, on the 15th and 16th August, 1842, with a portrait of the deceased / specially reported by Thomas R. Dunckley.

Contributors

Dunckley, Thomas R.
Royal College of Physicians of London

Publication/Creation

Dublin : Thomas R. Dunckley, 1842.

Persistent URL

<https://wellcomecollection.org/works/vv9jmub2>

Provider

Royal College of Physicians

License and attribution

This material has been provided by This material has been provided by Royal College of Physicians, London. The original may be consulted at Royal College of Physicians, London. where the originals may be consulted. This work has been identified as being free of known restrictions under copyright law, including all related and neighbouring rights and is being made available under the Creative Commons, Public Domain Mark.

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



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

THE TRIAL
OF
MRS. ELLEN BYRNE,
FOR THE MURDER OF
MR. AUGUSTINE BYRNE,
HER HUSBAND;
AT THE
COMMISSION COURT, DUBLIN,
ON THE 15TH AND 16TH AUGUST, 1842,
WITH A PORTRAIT OF THE DECEASED.

SPECIALLY REPORTED BY THOMAS R. DUNCKLEY.

DUBLIN:
THOMAS R. DUNCKLEY, 77, SOUTH GREAT GEORGE'S-STREET.

1842.

THE TRIAL

OF

MRS. ELLEN BYRNE,

FOR THE MURDER OF

MR. AUGUSTINE BYRNE,

HER HUSBAND;

AT THE

COMMISSIONERS' COURT, DUBLIN.

ROYAL COLLEGE
OF
PHYSICIAN

ON THE 12TH AUGUST, 1842.

C.

WITH A FOREWORD BY THE DEPUTY.

NEW
C.

SPECIALLY REPORTED BY THOMAS R. DUNCAN.

DUBLIN:

THOMAS R. DUNCAN, 14 SOUTH GREAT GEORGE STREET.

1842.

PREFACE.

THE history of this Publication is shortly, as follows :

The Trial of MRS. BYRNE having become matter of notoriety, in consequence, in a great degree, of the protracted inquest on the unhappy deceased, it occurred to me, that to publish a full and faithful report in a pamphlet might be advisable.

This report I have now given to the public and it will be found, I trust, faithful.

It was not my intention, in the first instance, to have added my name to the publication, but it having been suggested to me by friends in whose opinion I confide, that my authentication would be advisable to their suggestion I yielded, and now pledge my professional character for its accuracy and faithfulness.

THOS. R. DUNCKLEY.

PREFACE

The history of this Publication is shortly as follows :
The Trial of Mrs. BIRN having become matter of notoriety,
in consequence, in a great degree, of the protracted inquiry on the
subject, I perceived it occurred to me, that to publish a full and faithful
report in a pamphlet might be advisable.
This report I have now given to the public and it will be found, I
trust, faithful.

It was not my intention in the first instance to have added my
name to the publication, but it having been suggested to me by friends
in whose opinion I could not but think my authentication would be advisable
to their suggestion I yielded, and now pledge my professional character
for its accuracy and faithfulness.

DUNCKLEY.

ROYAL COLLEGE
OF
PHYSICIANS
OF
LONDON

COMMISSION OF OYER AND TERMINER.

TRIAL OF MRS. ELLEN BYRNE, FOR THE MURDER OF AUGUSTINE BYRNE, HER HUSBAND.

First Day.—Monday, 15th August, 1842.

THIS trial, which excited great interest in the public mind, was proceeded with this morning. The Court was crowded to excess, and the greatest anxiety was manifested to hear the proceedings.

Mr. Brewster, Q. C., Mr. Martley, Q. C., and Mr. M'Kane, were Counsel for the Crown.

Mr. M'Donagh and Mr. J. A. Curran, for the next of kin to the deceased.

Mr. Hatchell, Q. C., Mr. Fitzgibbon, Q. C., and Mr. Walsh, for the prisoner.

At ten o'clock, Mrs. Byrne, who was conveyed from Kilmainham in a covered car, escorted by a posse of the horse police, arrived at Newgate, and was conducted into the Court-house by Mr. Allison, jun., son of the governor of Kilmainham, on whose arm she leaned, and by whom she was led into the dock, where a chair was provided for her accommodation. Her appearance in Court produced a great sensation, and the utmost curiosity was evinced to catch a glimpse of her face or person. She was attired in a suit of the deepest weeds, made according to the most modern fashion, and wore a double veil of dense crape, which, even when lifted, fell around her face in such thick drapery as to render her face almost invisible. In her hand she held a rich boquet, and her demeanor throughout the whole proceedings was characterised by the most unruffled composure, and the utmost self-possession. She walked into the dock with a firm, unbroken step; and on no occasion, except perhaps at the moment when the indictment was being read, did she exhibit the slightest trepidation.

At ten o'clock Chief Justice Doherty and Mr. Baron Pennefather having taken their seats on the bench, the prisoner for the first time lifted her veil, and stood up at the bar in compliance with the order of the Clerk of the Crown.

Mr. Brewster, Q. C., stated that it was necessary that Dr. Harvey, the medical gentleman who first saw the deceased after his death, should be examined on the trial, and in order that no disappointment with respect to his attendance should take place, he had sent a person to his house for him. The person he had sent was informed that Dr. Harvey was very ill in bed, and had been bled at two o'clock that morning, and could not possibly leave his bed. He had since dispatched another person to Dr. Harvey's house with directions to see him and ascertain if he could attend. If this unfortunate fatality prevented the attendance of Dr. Harvey, it would be impossible to go on with the case. It would be unjust both to the prosecution and the prisoner to go on with it under such circumstances, and it would be still more unjust to the prisoner than to the prosecution. Therefore, if the Court had anything else to do, he did not wish their lordships' time should be wasted in calling the jury until they ascertained whether he could attend or not.

Chief Justice Doherty said that the Court had nothing to do but to try the case. The commission was over with the exception of this case.

Mr. Brewster.—Then we shall call over the jury, my lord.

Chief Justice Doherty—Call over the jury, and as soon as an intimation is made to us with respect to the attendance of Dr. Harvey, we will hear it.

A slight delay having occurred,

Mr. Brewster, on the return of the messenger, intimated to the Court that he was ready to go on with the case.

Clerk of the Crown—Ellen Byrne, are you ready for your trial?

Prisoner—Yes.

Clerk of the Crown—Those gentlemen in the box are to try you for your life, and if you have any objection to them, you have a right to challenge twenty of them, and as many more as you can show cause for.

Mr. Brewster—Before the book is put into any gentleman's hand, I, on the part of the Crown, beg to state that I have a strong wish that no person resident in the neighbourhood of Rathmines should serve on the jury; and, as I am unwilling to exercise the privilege vested in me, to put by jurors, I beg, gentlemen, when they come to the book, will say if they live in the neighbourhood of Rathmines; for, under the circumstances of this particular case, persons from that neighbourhood are not—I will not say fit—but they are not as fit as persons from other parts of the county.

Mr. Hatchell—I am sure my learned friend means to include in that, persons residing in Roundtown.

Mr. Brewster—I will say from Roundtown to Rathmines, and Rathgar, and all that neighbourhood.

Mr. Fitzgerald (agent for the prisoner)—Let the Clerk of the Crown call the residence of each person, and that will do.

The following jury were then sworn, after fifteen challenges on the part of the prisoner, and one put aside by the Crown:—William Alder, Merrion; John Brierly, Clontarf; Thomas M'Greery, Charlemont-street; Archibald Ferguson, Monkstown; John Fortune, Rathdown; George Fegan, Kingstown; Robert Kelly, Sidney Avenue; Irwin Smith, Kingstown; James Roe, Careysfort Avenue; John Bond, Crumlin; John Moylan, Kingstown; Robert Hall, Grand Canal, Esqrs.

The prisoner was then formally arraigned by the Clerk of the Crown on an indictment containing the twelve following counts:—The first count was to the effect, that the prisoner Ellen Byrne, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, did, on the 3rd of July, in the 6th year of the reign of Victoria I., feloniously and wilfully, and with malice aforethought, make an assault upon one Augustine Byrne, her late husband, and then and there feloniously, wilfully, and of her malice aforethought, did fix and fasten both her hands about the neck and throat of the said Augustine Byrne, and him did choke and strangle, of which choking and strangling he, the said Augustine Byrne, died. The second count charged the prisoner with striking, kicking, and beating the said A. Byrne on the head, neck, belly, and other parts of the body, with her hands and feet, and casting and throwing him upon a certain bed with great force and violence, and thereby inflicting several mortal wounds and bruises of which he died. The third count charged her with fastening a linen cloth about the neck of the said Augustine Byrne, and thereby choking and strangling him. The fourth count laid the death in the same way, but described the murder as having been effected by a ligature or band about the neck. The fifth count laid the death by placing a linen cloth over the head, face, mouth, and nostrils, and thereby choking and suffocating him. The sixth count laid the death in the same way, by placing a pillow on his mouth and nostrils. The seventh count laid the death the same way, by a bolster. The eighth count laid the death by placing a woollen blanket over the mouth and nostrils. The ninth count laid the like by a quilt. The tenth count the like by a sheet. The eleventh count the like by her placing, squeezing, and pressing both her hands over his mouth and nostrils. The twelfth count charged her

with having committed the murder by turning him upon his face, mouth, and nostrils on the bed, while in a state of intoxication, whereby he was suffocated and smothered.

Mr. Brewster, Q.C., in opening the case for the Crown, said—Gentlemen of the jury, though it is not my habit, in conducting prosecutions for the Crown, to state the case against the prisoner under ordinary circumstances, yet, in this particular case, I feel that duty imposed on me; because, Gentlemen, in this case you will not have to try the simple fact of a death inflicted by means at once apparent and obvious to every eye, but you will have to arrive at a conclusion under circumstances of very considerable difficulty—the case being surrounded by difficulties—in order to account for the death; those difficulties having, I am afraid, all of them, been caused by Mrs. Byrne.

Gentlemen, the prisoner stands indicted for the wilful murder of her late husband, Mr. Augustine Byrne. She, previous to her marriage with Mr. Byrne, in 1833, had been the widow of Mr. Wall, and was possessed of very considerable property. From 1833 down to the period of the death of Mr. Byrne, it would appear that this couple did not live happily together; on the contrary, I am afraid, there were frequent and violent disputes between them, so that it may be said that latterly, at all events, their lives were mutually very unhappy. It appears, Gentlemen, that the unfortunate prisoner at the bar was addicted, in a more than ordinary degree, to habits of drunkenness. Of course, you will understand that her habits or her general character are not in the slightest degree to prejudice her in your estimation—I mean so far as your verdict depends upon it—and I feel that so strongly, that I should not even state to you the circumstance, were it not, that when you come to hear the evidence, you will find it becomes a material part of the case, and, as I apprehend, also an important portion of her defence; and therefore it is that I am not guilty of any unfairness towards her in mentioning the circumstance to you, for without it, it would be utterly impossible to account for many of the facts that will be deposed to you in evidence. It appears that Mrs. Byrne, the prisoner, had had by her former husband four children; of these four, one, a young woman, I will say, happily for herself, died before this unfortunate transaction; but there were three sons, all living in their mother's house at the time of the occurrence which you are to inquire into. The eldest of these was Joseph Wall, the second eldest was Luke Wall, and the youngest was Valentine Wall, a schoolboy who had come home for vacation, all of whom will be produced before you, it being one of the most deplorable circumstances in this case that the prisoner's own sons are amongst the principal witnesses against her. They kept two servants—one, a man named Talt, and a woman named Catherine Finnegan. They also will be produced to you; and I think it will be found that these five witnesses are the only witnesses who can throw any light as to any fact occurring prior to the death of the deceased; and I think, that when the case for the prosecution has been closed, it will excite the wonder and astonishment, if not the indignation, of every right-minded man, how justice could have been so prostituted as to have an inquiry for twenty days, disturbing the public mind and enflaming it, upon such a case; and I am greatly deceived if this day will not easily terminate the inquiry with which you are entrusted. In addition to these five witnesses, you will have produced several medical gentlemen, whose evidence will be most important in enabling you to arrive at the real cause of Mr. Byrne's death. With reference to the evidence they will give, I do not at all intend to offer it to you in any detail; I am not skilled enough in the art which these gentlemen profess, to do it with such accuracy as would be satisfactory to myself. And perhaps you will come to the conclusion, that it must be upon some broad, distinct evidence that you will be able to act in a case of this nature, and, therefore, I do not embarrass you with the minute details which, if necessary for the ends of justice, you will extract from the witnesses, but with which, I, in opening the case, deem it

quite unnecessary to trouble you. It appears, that the late Mr. Byrne was very fond of field sports, and was in the habit of frequenting races. The Bellewstown races having occurred on the last day of June, he attended them; and about ten or eleven o'clock that night he returned home, and complained of not being well; and with a view to counteract the ill effects of the cold with which he said he was affected, he, acting under what appears to me to be an absurd notion, warmed himself with a glass or two of whiskey, and having taken them he went to bed. It appears that Mr. and Mrs. Byrne, in consequence of unhappy disputes, had not been for some years in the habit of sleeping together—they kept different rooms; and it seems that their disagreement had gained such a pitch, that Mr. Byrne had his room locked inside in such a way as to disable and prevent his wife entering it at pleasure. The room which he occupied was the back drawing-room, and the prisoner slept in a room immediately over it. It will further appear to you, that Mr. Byrne's general habits were temperate—that he was a man who, for months together, conducted himself with strict propriety and discretion, but at times, unfortunately, he indulged in the use of ardent spirits, and took what is called a "bout" of drinking, which lasted for a week or so, and during that time his state, if not amounting to insensibility, was such as disabled him from exercising the functions of a reasonable being. It appears that on the morning after the Bellewstown races—namely, the 1st of July—Mr. Byrne still continued to complain of not being very well; however, he came down to breakfast, and, so far as I can find, he did not leave his house during that day. As far as I can find, he did not leave the house during that day, and it would appear, that on the day after he found himself decidedly worse; for, on the Saturday, the 2nd of the month, it would appear that if he did come out of his room at all, of which I am not quite sure, he very soon returned to it and lay down on his bed. This will be proved to you by the youngest of his step-sons, who was exceedingly attached to his step-father, as the young men were, and justly were, for, from all I can hear, he acted the part of a kind parent to them. This boy went up to see his step-father on that day, and found him lying without his coat or waistcoat on the bed—not entirely stripped or under the clothes; but from that time we are not able to give any clear account of what happened; for, though the matter was twenty days under inquiry, it does not appear what happened after that Saturday—at least nothing appears on the record that I can find. It appeared, that on the following Sunday, Mr. Byrne did not get up at all. He was, however, seen in bed, I believe, by all his step-sons, but certainly by two, between three and eight o'clock on the evening of that day, and it will be satisfactorily established to you, that at that time he was decidedly intoxicated, and I believe also, he was very far from being well. But, with the exception of that momentary sight of him, from that period until his dead body was found, no human being but the prisoner laid their eyes upon him. The discovery of the dead body did not occur till that day week, or late on the Saturday night following; and, therefore, as to what occurred in his room during that interval, it is utterly and totally impossible for me to say. No human eye saw, and no human tongue can tell what there happened. It will appear to you, that from day to day during that interval, the prisoner at the bar was up and about, and she was several times during that period, apparently at least, able to transact business. She might be more or less fuddled with liquor, but she was able, to a certain extent, to transact the ordinary business of the house, so far as giving directions; but it does not appear, that during that whole week she left the room save for a very few minutes.

Gentlemen, I had intended, if I found that I could do it with any degree of satisfaction to myself and fairness to the prisoner, to state to you what did occur from day to day, outside the room in which the deceased and she were, in so far as it was connected with what occurred within; but I do not wish to do so, and consequently I shall only draw your attention to other facts which bear upon the

case. I should have stated to you, that on this occasion, Mrs. Byrne came down from her own room, and continued in his, during the entire of that week. It will further appear to you, that during the drinking "bout" which last preceded this one, at an interval of two or three months, the opposite course was pursued, and they both stayed in *her* bed-room; and during these drinking bouts, they lived together, while they were unfit for the society of any other person, and that on the last occasion preceding that, they were both in *her* room.

Gentlemen, although I cannot detail to you the occurrences day by day, because I am not sure I have been able to collect them with accuracy, and because the witnesses examined gave, to a certain extent, inconsistent accounts of the transactions of different days, I can state some things that unquestionably occurred on different days that may be material. When I state that the witnesses to-day may give inconsistent accounts, I do not mean to say that they will state different facts; but they may allege different times for the occurrence of the transactions, and I think you will not be surprised at that. I have no doubt at all that they tell what they believe to be true; but I would be surprised if they all concurred in attributing the same facts to the same time, because there can be no doubt of this—that you will hear from the witnesses, the young Messrs. Wall, and the servants, who were in the house, too, wherein such things were not unfamiliar, that they were not surprised at their shutting themselves up in the room; and they thought that at the end of the week, this disease would expend itself, and that both would return into the ordinary walks of life, as they had done before, and therefore they did not take notice of what then were little circumstances, but which are now all-important to lead your minds to a right conclusion as to the verdict you may feel it your duty to give.

I will state a circumstance that occurred on the Sunday. It appears that the inhabitant of the next house is a Mr. Barry, and that gentleman will be produced before you, in order to state, that on the evening of the Sunday previous to the death of Mr. Byrne, he heard in the back drawing-room, where the deceased and Mrs. Byrne were, the sound of what he considered high or ill language between two persons. There can be no doubt, that the only persons in that room were Mr. and Mrs. Byrne, and therefore, if there was language of dispute or quarrel, it must have occurred between them.

I do not bring forward this fact with a view to cut down this case. If you come to the conclusion that Mr. Byrne came by his death from violence, you must steer clear of a conviction for manslaughter, because there are circumstances in this case which, in my judgment, clearly establish that she is guilty of murder, or that she is innocent. I shall now proceed to state to you what occurred on the Monday. It appears, that on two or three different occasions, the youngest boy went up to his stepfather's room to get a tea-cup, by the directions of his brothers, who were at breakfast in the parlour below; he rapped at the door, and his mother (the prisoner) opened it so as to hand the cup out, but not so wide as to enable him to see anything that was happening inside. The prisoner, when handing him the cup, called his attention to the fact, that there was some dirt in the cup, and desired that it might be washed by the servant boy. The evidence of this young boy is, that the dirt in the cup was darker than sediment of tea. This part of the case is not so important as it was supposed when it occupied the coroner's jury, who at first were inclined to think, that poison had been administered to the deceased; for, independent of the circumstance, that it is hardly possible that if the prisoner meant to poison him, she would have given the cup to her son with some of the poisonous ingredient in it, thereby establishing the case against herself, the *post mortem* examination clearly established, that there was no poison of any kind administered. It is also to be observed, it was the opinion of the surgeons who examined the body, that the state of decomposition was such that it would be difficult to ascertain,

whether poison was administered at the time death took place; but that part of the evidence I do not press, because I have no doubt upon my mind, as far as I understand the case, that there was no poison used—although it may not be quite so clear that no narcotic was administered. On a subsequent part of the day on that Monday, at dinner hour, young Valentine Wall came up to his stepfather's room for a beer-can; his mother opened the door and gave it to him in precisely the same manner that she had given him the tea-cup, taking care that he could not see into the room; she desired him to fill the can with beer and bring it up to her: he did so, and she took it from him at the door, still adopting the same precautions as she had on previous occasions. I do not know that there is any other particular fact that I can say with certainty did occur on this Monday. You will find it of great importance to ascertain the particular day on which each transaction did occur, because one of the circumstances to be considered by you is, what time, previous to the finding of the body, death did take place? I can with certainty and precision mention to you something which did occur on the following day, Tuesday, for it seems that upon that day, the bell having been rung, the servant, Patrick Talt, went up stairs, and received instructions to go out and purchase a certain quantity of spirits. The servant got money for that purpose, and having purchased the spirits, he gave the bottle to his master through the door, who, according to his account, adopted the same precautions that his mistress had done before. But here I should remark, that there was no clear evidence as to the identity of the person who received the bottle from within, for Talt came to the conclusion, that the person inside was his master, from his being familiar with the voice, and from his being able to state, that the arm protruding from the door was that of a man and not a female. It would be seen, that from day to day, almost every day, the quantities of wine, spirits, ale, and porter which were sent into that room were enormous—wonderful, indeed, if they were designed for the consumption of two persons; and still more marvellous, if there was only one to partake of them. Upon another day, whether Tuesday or Wednesday, I cannot say, Mrs. Byrne ordered rashers and eggs to be sent up; on what day this occurred I am not able precisely to state, nor do I know of any circumstance from which to conclude whether Mr. Byrne was alive on the day when the rashers were sent up. If they went up on Tuesday, he might have been alive. It appears, too, that strawberries were bought and sent up to the room of the deceased; and when it is recollected that it was the opinion of some of the medical men that the seeds found in the stomach of the deceased might be the seeds of strawberries, the circumstance of the purchasing of the strawberries on those days may, in some measure, lead to the presumption that up to that time he was alive; but the surgeons are not satisfied that it was strawberry seeds they found in the stomach—

Mr. Curran—The evidence of the medical gentlemen is, that they found one seed.

Mr. Brewster—This may be a feature in favour of the prisoner, and I do not wish to take it from her. I am here for the purpose of bringing her to justice, if she be guilty; but I do not intend, in the smallest degree, to prejudice her case by keeping back anything to which she is fairly entitled.

Mr. Curran—Nor do my clients wish to do so.

Mr. Brewster—It is right to say, that from the time the strawberries went up, up to Saturday, it does not appear that anything capable of sustaining life went up to that room except ardent spirits; but upon Saturday morning, and it is one of the most extraordinary circumstances in this case, and one of these which I think bears most upon the prisoner, that upon that Saturday week after her husband had taken to his bed, she ordered two cups of tea, and two slices of bread and butter, which were taken up under the impression that there were two persons to eat them. No alarm had been given, no statement was put forth in

the house to the effect that the inmates were affected in any manner more serious than what the injuries of drunkenness and debauchery might entail. No alarm being given by Mrs. Byrne, she being in the same room, and supposed even to be lying in the same bed with her husband—there being no apprehension, nor the slightest suspicion on the minds of the inmates, you, Gentlemen of the jury, may easily conceive, how great was the consternation and surprise of young Mr. Wall, when, at 5 o'clock, he was called by his mother into the room to look to the deceased. On going in, she said a few words to him as to the state of Mr. Byrne, and on going over to the bed, he found the unfortunate deceased lying on the bed stone dead. Joseph Wall came in, and he, with his brother, turned the body on its back. This was at five o'clock on Saturday.—When the son told his mother that Mr. Byrne was dead, she expressed her dissent, and said it could not be so; and this, Gentlemen, is the most extraordinary fact in the whole case, because I think, you cannot, Gentlemen, entertain a doubt, that the man must have been three or four days dead at this time; and therefore, how she could have expressed a doubt on that point passes my comprehension altogether. I do not attempt to account for it, it will be for you to say, what inference, consistent with her innocence, you can draw from it; but I am afraid you will find it a powerful circumstance towards establishing her guilt.

The alarm having been given, and medical men having been summoned, it turned out that the man was not only dead, but that he was in a very advanced state of decomposition, so much so, that it will be proved to you, that if his death was occasioned by strangulation, the marks of violence would have been wholly effaced; and upon these grounds, the concealment of the death of her husband may be accounted for, her object being to keep his death a secret until the marks of injury might be obliterated, which could have been most easily detected immediately after death, if violence had been used to him. I have now stated to you all the evidence of the positive facts which I shall be able to lay before you; there are classes of facts mixed up with opinions which I shall not detail, and as regards the medical evidence, the skilful gentlemen who made the *post mortem* examination will be enabled to satisfy you. However, there are two circumstances in the death of Mr. Byrne which, in the opinion of some of them, can only be accounted for by the assumption, that he met his death by violence; and these circumstances are, the protrusion of the right eye, and the blood-shot appearance of the left, taken in conjunction with the protrusion of the tongue, both of which circumstances usually occur in deaths by strangulation and other violence, but which, I believe, are not found in other cases. Then there is, perhaps, only one other circumstance I have to detail to you, that when the attention of Mrs. Byrne was called to these extraordinary appearances, when she heard it commented on and remarked as extraordinary, how she remained in the room for so many days as must have elapsed since his death, she then stated, that the dead body presented the same appearance five minutes after death. That appears very extraordinary indeed, when you compare it with the expression she used to her sons when she called them in to his room on the preceding Saturday, expressing doubts as to his death altogether, and yet, when she heard of the decomposition being remarked on, she said, the body presented the same appearance five minutes after death, representing, at the same time, that death took place on Friday. I believe you will be satisfied by the concurrent testimony of faithful witnesses, that it was impossible the body could go into such a state of decomposition in so short a period. Gentlemen, there are other portions of the conduct of this lady which I think will come much better from the witnesses than from me; but there is one additional fact, in reference to the appearance of the body, which I think it proper to mention, and that is, that contrary to what is the usual event after death—namely, that the decomposition takes place for the most part in the abdomen—in this case decomposition took place in the head and neck, a circumstance which is also calculated to lead to

the conclusion that death occurred by violence ; but there is this indisputable fact, undoubtedly, that there was no mark whatever to be discovered, either on the neck or face, that would indicate any violence whatever ; that is a fact which the doctors are agreed in, although those who come to the conclusion, that his death was a violent one, think that the marks were obliterated by the extent of decomposition. These, Gentlemen, are the facts of the case ; and now, I believe, I have nearly discharged the duty that devolved upon me.

I close by again referring to the nature of the offence of which the prisoner is guilty, if she be guilty at all. It must be known to persons of your experience, Gentlemen, and to every one who hears me, that deaths, which are the subjects of criminal prosecutions, are divided into murder and manslaughter ; and, as I have already stated to you, that, in my judgment, and standing here an humble instrument to administer the criminal justice of the country, I am bound to mention to you the fact that death here was murder, if it was a violent one. The interests of the public require that I should maintain that view of the case. Heat of blood and blows are what the law calls provocation for the commission of such offences, and thereby cuts the crime of murder down to the mitigated one of manslaughter ; but in this case, there is evidence to show that there was no such heat of blood or of blows as, in my judgment, would cut down the crime to manslaughter : and it would be a monstrous and dreadful doctrine to go abroad, that if husband and wife quarrel, dispute, and use ill language towards each other, that either party can be guilty of less than the crime of murder who takes life as a consequence of that abuse. But this case is entirely free from all difficulty on that subject, because the evidence for the prosecution goes to establish, supposing Talt to be a credible witness, and nothing had been said to the reverse, that a single murmur or a breath was never heard in the room where the deceased and the prisoner were, from the Sunday evening after the Bellewstown races until the body was found dead ; that, in fact, there was a dead uninterrupted silence during the whole of that time—for a great portion of it it was the silence of death—how long it was so, it is not so easy to say. I do not think I act unjustly or unfairly to the prisoner in putting the case on its true grounds, because I think it right to give you, Gentlemen, this caution, that you will not let the indignation, the just indignation which you may feel at the beastiality and grossness of the life of this woman, sway you in deciding as to her guilt or innocence. Let her be the most profligate debauchee, the most abandoned drunkard that ever disgraced the female sex, she is not to be tried or convicted here of drunkenness, but she is to be tried for putting her husband to death ; and you are not to be swayed or influenced, in the remotest manner, to come to a conclusion that she is guilty, because she is an abandoned and profligate drunkard, but you are to come to a conclusion, because she killed her husband, if she did so. If she did so, there is no crime deserves greater punishment. The crime for which she is arraigned, until lately, was esteemed in law as petty treason ; by a recent statute, that law has been changed, but the guilt and enormity remain undiminished. There can be nothing so horrible as for a man to meet his death by the hand of his sworn partner, more horrible, if possible, if senseless and helpless, she takes advantage of his inability to resist her, to effect her horrid purpose, which, if she did, she must have long preconceived.

Mr. Luke Wall, examined by Mr. Martley, Q. C.—I am the son of Mrs. Byrne, the prisoner at the bar, the second eldest ; her second husband was Mr. Augustine Byrne, the deceased. I resided with them in their house in Rathmines since I returned from school, which is nearly two years ; my brother, Joseph Wall, lived also in the house ; Christopher Talt and Catherine Finnegan, the servants, also lived in the house. I remember my step-father went to the Bellewstown races ; he returned on the 30th June, on Thursday at about eleven o'clock at night ; I saw him in the back parlour, my mother was there ; I think he had drank something that evening ; he did not appear sober. Sometimes

they used to sleep in the same room, generally they did not; he slept in the back drawing-room; my mother's room was the top room, immediately over that. I did not see him go to bed that night, or leave the room to go to bed. I do not recollect seeing him at all on Friday; I breakfasted and dined at home on the following day, Friday; I might have seen him on that day, but I do not recollect. I do not think I saw him on Saturday at all. I saw him on Sunday between three and five o'clock; he was in bed then in his own room; he was asleep apparently when I saw him, he was completely undressed. I had no conversation with him on Sunday; my mother was in the room at the same time; my brother was not; I had no conversation with my mother as to the state he was in. He used generally to lock his bed-room, there was a spring lock to it; when you would shut the door, you should have a key to open it again. When sober, my step-father and my mother used to live very friendly together; when drinking, they used to quarrel now and then. I remained only about a minute in the room on that Sunday; I made no particular observation; I went in with the things and went out again. I did not see him again till Saturday the 9th, when he was dead. On that Sunday evening, the 3rd July, I heard a noise in the room, a drunken moan, I think; that was about six or seven o'clock in the evening; I did not hear any noise at a subsequent period of the evening; heard the voice of only one person; when I heard the noise, I went up and knocked loud at the door, and the noise stopped. I cannot state positively whether my mother was in the room then or not, I think she was. I heard no subsequent noise till I saw Mr. Byrne dead. On that Sunday my mother did not dine with me or my brothers. I do not recollect that my mother breakfasted or dined with us from that day till I saw my step-father dead.

In respect to Mr. Byrne's habits, what were they—was he of temperate or intemperate habits? Intemperate.

Would you say that he was habitually intemperate? No, I would not, but he would take fits of drinking; I knew him to have one of these fits previously to the last—I think it was in May, and it lasted nearly ten days: during that period, my step-father remained constantly in my mother's bed-room the top room; my mother was always in the room, but not constantly: she used to be up and down through the house; she did not breakfast or dine with us on that former occasion, no more than on the last; I observed not the slightest difference in the way they did on either occasions: on that occasion, we would sometimes send meals to the room, and sometimes drink.

Baron Pennefather—Of what particular occasion do you now speak? I speak of both occasions.

Re-examined by Mr. Martley—On the Tuesday, I think it was, after the Sunday in question, rashers and eggs were sent up to his bed-room; the servant told me; I did not hear my mother call for them; I do not think that they were eaten; I am not sure. I afterwards saw some rashers in the room; that was after the body was discovered dead, but I am not certain as to the day; on the Wednesday after that Sunday (I told the Coroner it was on a Thursday, but I since recollected that it was on Wednesday;) on that Wednesday I went to his bed-room at 10 o'clock in the morning; I saw my mother then, but I was not inside of the room; the door was shut; I knocked; she came to it; I told her I wanted some money; she went up stairs to her room then, and gave it to me. After that, I got her to lie down on the bed. On leaving Mr. Byrne's room to go up stairs, she just closed the door after her, leaving it on the hinge; any person could open it and go in. I think she remained in her own room on that occasion until five o'clock: she was in the back drawing room again at five o'clock: but I did not see her returning there from her own room. There were strawberries sent up on Wednesday: I did not see them, but I was told—

Mr. Martley—Do not tell us any thing that you were told.

Why did you say, you prevailed upon her to lie down upon the bed? Because

I thought that if she did not go down again, he might get up; she appeared to me to be intoxicated at the time.

To Baron Pennefather.—When I got her to lie down, she merely lay down on the bed in her clothes. Friday morning, about ten o'clock, was the next time I went to his bed-room door; it was shut; I knocked; she came, and half opened the door. I think she opened it so that I could see into the room, but I could not see the bed: I told her, on this occasion, that something was wanted for dinner; she told me not to be annoying her. I went away at that time immediately; she then returned into the room, and shut the door. I did not, all this time, make any inquiry about Mr. Byrne, the thing was so usual; I did not go there again before Saturday evening, when, between six and eight o'clock, as I was going up stairs, she was at the door, and called me in to lift him up off his face; on being called to lift him, I went in, and saw him lying on his face; observed his ears to be quite black; I called my brother up to lift him, but on turning him, he said he was dead; that was the first time I knew it; my mother was then in the room, and she said "O, no, no!"; she said nothing else; I do not remember that there was any thing said about a medical man: Mr. Byrne was lying completely on his face; his head was, I think, in the usual place; I am not sure, that it was on the bolster or the pillow; I did not touch him then.

Baron Pennefather.—When your brother turned him from off his face, was it light or dark in the room? It was light; I am not sure.

Were you ever, on any former occasion, called up to turn him? No, I was not.

To Counsel.—I made no further observation about him when he was turned; I think the bed-clothes were on him at the time; his own clothes were not.

Baron Pennefather.—The Sunday after his return from Bellewstown was the only day you saw him till after his death? Yes; he was, when I saw him then, in bed, and I think asleep.

Are you sure that he was then alive? Yes; I am almost certain that he was then alive; on that Sunday evening I heard his voice; I did not hear him breathe.

You said you heard a drunken moan? Yes.

Did that come from one person? Yes.

Was it from your step-father it came? Yes, certainly.

When you heard his voice, could you mention or distinguish any word of his? No, it was a sort of moan.

What enables you to say that it was your step-father's moan you heard? I knew his voice quite well.

Was there anything peculiar in it by which you could distinguish it? I knew his roar.

Did you hear his voice afterwards? I did not.

When you went into his room on Sunday and saw him on his bed, could you say that he breathed then? No, I did not try, but I am almost certain he was then alive. When I got my mother up to her room on Wednesday she left the back drawing-room door ajar after her; when I saw my mother on Friday, I am not certain that she was drunk.

To Mr. Martley.—I am sure that on that Sunday evening I heard my step-father's voice but once; I did not, on any part of Sunday, hear my mother speak to my step-father.

Cross-examined by Mr. Hatchell, Q.C.—The fits of drunkenness of which I spoke were at intervals, and were to my knowledge repeated on former occasions; on the last but one, the fit lasted for nearly ten days. I spoke of a drunken moan or roar; on former occasions, we used to hear noises much the same; these acts of the parties were so frequent that they made no impression upon me; on some occasions, these drinking fits took place in my mother's room; on such occasions the family were excluded from that room; the door of the

apartment used to be kept shut, but not locked, when they were inside in it; on these former occasions, there were also quantities of liquor sent up to the room; it would be taken in then exactly as on the last occasion, by my mother coming to the door for it; on these former occasions, very little food would be sent up to their room: I am sure my mother was in the room at five o'clock, the room of my step-father was immediately over the back parlour, I could hear the steps of persons moving in it.

Are you led to that opinion by what you heard? I heard a noise or moving about the room.

You have described the way in which Mr. Byrne kept his bed-room—can you say, would he permit the servant to make his bed in it? He would not; he always carried the key of it with him whenever he went abroad; he made his own bed, if it were made at all; he used never to allow any servant to go into his bed-room; when he returned from Bellewstown, he had the sign of drink on him; whenever he took any of these drinking fits, he used generally to return home tipsy on the evening before. I had been at the door of the bed-room on Friday (that preceding the Saturday on which deceased was found dead); the door was opened, and I got no offensive smell; there was a side door to the room off the landing place; the back was divided from the front drawing-room by the folding-doors, which were fastened on the inside in the back-room; the end of the bed was opposite the fire-place; the bed lay between the window and the folding doors; the bed lay behind the side or back door; that door opened back against the bed, so that when it was opened I could not have a view of the bed. On a former occasion I found the deceased lying drunk and insensible on the floor; that occurred about five or six months before the period in question; when I found him so, I did nothing with him.

Why did you not assist him? Because if he should find it out afterwards, when he got well, he would be very angry; he did not like us to know that he drank.

To a Juror—When my mother called me on the Saturday I think she was sober.

Joseph Wall, examined by Mr. M'Kane—I am brother of the last witness, and am older than he is; I was at Bellewstown races; the late Augustine Byrne was there, at least he went from home for the purpose of going there, but I cannot say that he was there; he returned on a Thursday, at, I think, between ten and eleven o'clock at night; I was out at the time, but when I came in, after ten o'clock, I found him eating part of a duck; he appeared to me to be tipsy at the time; there was drink there; I remained about twenty minutes in the room, when I went to bed, I left him after me, drinking. I was in the house a part of the next day, I breakfasted at home; I did not see him next day; Mr. Byrne did not breakfast with us the next day, nor did my mother; I did not see Mr. Byrne on the day following—that was Saturday; he or she did not breakfast with us on that day or Sunday; I saw him on Sunday, between three and five o'clock in the afternoon; he was lying on his bed then; my mother was with him; I did not go into the room on that occasion, but stopped outside of the door, and turned my head round the angle of the room; he was lying on his back; I went down stairs after that. There was no dinner; I sent up the servant boy; he wrapped and got no answer; "then" said I, "I will try and get the keys."

When I knocked, the door was opened by my mother; I asked her for the keys; my mother said she had not them, and we thought to force into the room for them; she resisted us, and she was so tipsy, that she fell down at the door; I told my youngest brother to go in, as she would not mind him so much; he did so, and fetched the keys from off the chimney-piece. Between five and eight o'clock the same evening, we (the brothers) were in the parlour below, when we heard a noise as if she was scolding Mr. Byrne, and he, as if annoyed by her, growling; you could hardly hear another voice besides his; the voice that came from him appeared to be a drunken growl, as if he was dissatisfied; nothing else

took place that night; I was not again at that room-door until Saturday, when I found him dead. I dined in the house every day during that week; nothing used to be sent up to their room from the table, but, on the morning of the Saturday on which I found him dead, two cups of tea and two cuts of bread and butter were sent up; there might have been food sent up in the course of the week, but if so, it was without my knowledge; between six and eight on Saturday evening, myself and my brother were preparing to go out to walk; I sent him up stairs for the purpose of changing his coat; he shortly after, came back and said to me, "Come up, and lift himself up, he is lying on his face;" "himself" was the term my brother generally used when speaking of Mr. Byrne; I went up and found him lying on his left side; his ears were of a bluish colour; I took hold of him by the thick of one of the arms, turned him, and found he was dead; I said to Mrs. Byrne that he was dead, on which she told me to send for a doctor; I turned out of the room and immediately sent the servant boy for a doctor; I did not hear her say any thing more than I have mentioned: when the doctor came afterwards I was not in the room; the latter was dark all the time, or the light was very faint; I did not on the occasion mind more than merely to run out when she bid me, and send for the doctor; I felt on that occasion a very heavy smell in the room; I did not mind it, for on former occasions there would be a heavy smell in it, but not exactly the same as that; they kept all the slops, and every filth of the place, about the room; I had not observed the smell before that time; I did not give any direction to have the house-buckets removed, nor did I hear any directions given to that effect.

Cross-examined by Mr. Fitzgibbon, Q. C.—It was not a large room; it was not a novel occurrence that they should be both locked up together; I have known them to have been locked up for four or five days, sometimes more and sometimes less; the bout before this took place in the month of May, they were locked up together for eight or ten days in the top back room, in the room that my mother kept; on former occasions when in these fits, he used never to come down to breakfast; the night he came from Bellewstown, he did not drink any thing in my presence; he did not complain to me of having a cold that night; I was in the room above twenty minutes.

Valentine Wall, youngest son of the prisoner, examined by Mr. M'Donagh—I knew the deceased, he was married to my mother; in the month of June last, I came home from school; Mr. Byrne was at Bellewstown races; I remember his coming home from the races; he appeared to be well, I think, on returning; I think it was Friday or Saturday when he came home; I remember the next Sunday after his return; I heard some noise that Sunday in his room; it was about eight or nine o'clock, I think; the noise I heard was—

The witness here spoke in a tone so inaudibly low, that the bench ordered that he should be moved from the witness-box, and placed in a chair on the table. This order, however, was subsequently countermanded.

Examination continued—The noise I heard was like as if he was bawling; I think it was dada's voice I heard, that is Mr. Byrne; I used to call him dada; it was not a very loud bawl; there was more than one such bawl that evening. I do not know how many; I think I was in the parlour at the time; I saw my dada on his bed on the Saturday before that Sunday; he was then only half dressed; my mamma was in the back parlour; I was speaking to my dada that Saturday: he seemed as if he was sick; some one went up and knocked at the door.

Mr. M'Donagh—Who was it who knocked at the door?

Mr. Fitzgibbon—That question is very objectionable.

The Court ruled that it was a proper question.

Question repeated—I think it was Luke Wall; I did not hear any noise inside then, nor did I after; I think I saw my dada on the Monday following; no, I do not think I saw him after Sunday; I went up to the room after that Sunday

for a tumbler, or a tea-cup; I knocked at the door; I am not sure what day that was; mamma opened the door just a little.

Mr. M'Donagh—Did you see her entire person? No.

Mr. M'Donagh—Did you get the cup or tumbler? I got one of them; I think she said, there was no tumbler there; the cup was dirty; there was a beer can in the house, I think; I remember having gone up stairs for that; I knocked at the door; it was opened by mamma; I asked her for the beer can; she gave it to me.

Mr. M'Donagh—Did she say any thing you were to do with it? I do not recollect.

Mr. M'Donagh—Did you bring any thing back to your mamma? I think I did; I think it was beer; my mamma, I think, told me to bring the beer when I went up for the can; I cannot exactly tell what day of the week this was; there is a garden attached to the house; I remember having gone to the garden on one day that week; I looked up to the windows, the blinds were down; I did not go to that room for a book.

Mr. M'Donagh—Did your mamma breakfast with you during that week or any of the days? I am not sure.

By a Juror—What day did you come with the beer can?

Court—He cannot tell.

Mr. M'Donagh—How soon after the Sunday when you heard the bawling did you go for the beer can? I cannot exactly say; it was two or three days.

Baron Pennefather—The boy's recollection is very indistinct.

Cross-examined by Mr. Walsh—When you saw your dada on Saturday, how was he lying in the bed; on his side, face, or back? I think he was on his side.

Mr. Walsh—You say he was half dressed, what clothes had he on?

Court—Can that be material?

Mr. Walsh—If your lordships do not think it so, I will not ask him it. Witness, you may go down.

Baron Pennefather—How old is that boy?

Mr. M'Kane—Ten years, I believe.

Paul Barry, Esq., examined by Mr. Curran—My name is Paul Barry: I live next door to the house of deceased; I recollect Saturday, the 9th of July, when he was found dead; on the Friday before that, I perceived a smell in my back drawing-room; there is a nine-inch wall between my back drawing-room and the house of deceased; on Saturday, when I went into deceased's house, I found a very bad smell, when the Coroner sent for me, so much so, that I would not go up stairs; the smell I perceived on Friday in my own house, and on Saturday in his, were both disagreeable. I will not take upon me to swear it was exactly the same smell I had found in my own house. My impression on Friday night, when I got the smell was, that the cat or the dog had been in the room and caused a disagreeable smell. I saw the body of deceased that Saturday night; I recollect Sunday, 3rd of July; that night I heard quarrelling in the back drawing-room of deceased; it was about nine o'clock or after it; there was more than one voice; I did not mind it much, for it was of constant occurrence; I heard no blows struck; I have heard a noise as of furniture thrown about the room before that; I could not distinguish what they were.

Baron Pennefather—Do you mean to say, that on that Sunday you heard the noise of chairs?

Witness—No, my lord, it was words; between that Sunday night and Saturday when the body was found, I cannot say I heard noise; I saw Mrs. Byrne on the night the body was found; I cannot recollect what she said; she did say something to the Coroner; the jury was empannelled that night; on the next day, I saw Mrs. Byrne in her own house; I happened to be in the passage at the time, and in coming down from the body, after the *post mortem* examination, she said, "Oh, the body had the very same appearance five minutes after death";

I will not swear whether it was to me or the Inspector she said this; I asked how long Byrne was dead; she said he died on Saturday, the day before; she did not name any hour; I did not ask her any more questions; she left the room then; that was all she said.

Cross-examined by Mr. Hatchell—The front and back parlours and drawing-room are the rooms I generally inhabit in my own house; my daughter sleeps in the front drawing-room, and I in the back; Mr. Byrne's bed-room adjoins my back drawing-room.

Mr. Hatchell—I understood you to say, that you did not use your back drawing-room every day? When I come home on week-evenings, I may be tired, and rest myself in the front parlour on the sofa.

To a Juror—It was in my back drawing-room, which adjoins the bed-room of the deceased, that I discovered the smell; that smell remained all day on Saturday; on Friday and Saturday. On Sunday, I had all the windows open: I was not much in the room on Saturday, and did not recollect having discovered the smell until it was brought to my mind by being sent for by the Coroner, Mr. McCarthy. I thought the smell was similar to what I perceived the day before, on entering the house of the deceased.

Christopher Talt, examined by Mr. Brewster, Q.C.—I was in the employment of deceased, Mr. Byrne; I was his only man servant; I was living with him five months; he had a drinking bout once in my memory before the one immediately previous to his death; that is two altogether; I remember the races of Bellewstown; he went from home to go there; I do not remember the day of the week he went there; I remember, he came home on Thursday night about 11 o'clock; I brought then into the house a pint of spirits; I brought the whiskey into the parlour; Mrs. and Mr. Byrne and Vall. Wall were there: nobody else, he did not appear to me to be drunk; I did not see him after that till 5 o'clock on the following evening; it was my habit to go up every morning for his boots; I did not go into his bed-room; the door was always shut; it had a lock that could not be opened outside without a key; I did not go up on Friday morning; I brushed his coat upon him at 5 o'clock in the evening; he was then down stairs: it was before dinner; I do not know whether he went out that evening; I did not see him going out, nor I did not let him in; he went into the parlour; it was in the hall I brushed his coat; he was not at dinner; it was before dinner I brushed his coat; I did not see him again that night; I cannot safely say that I brought in whiskey that night; I went up stairs, I passed by his room; on Saturday I did not go up to his room in the morning to get his boots to clean; I brought up spring water; I knocked at the door; no body answered me; I left the water jug and went down again; I did not bring hot water for shaving to him on that morning or through the week, because I was not ordered; I did not see Mr. Byrne on Saturday; I did not bring in any spirits that day; I saw Mrs. Byrne that day; I saw her in the course of the day on Friday; she was down in the parlour when I brushed his coat; I cannot say, whether she dined in the parlour; to the best of my opinion she did not; I cannot say, whether she came down to breakfast or dinner on Saturday; on Sunday I did not see Mr. Byrne; I was at his room door at 10 o'clock in the morning; Mrs. Byrne answered the door; I did not take up water that Sunday; she sent me to Lynch's for a bottle of wine and a pint of spirits; she did not give me the money for it; I got the wine and spirits; Mrs. Byrne was at the parlour door and I gave them to her; I do not know where she went then; I went up stairs again that day about 3 o'clock; I did not see either Mr. or Mrs. Byrne then; I went for the keys of the pantry; I knocked at the door, it was not answered: I remained three minutes and heard nothing said inside; I did not get the keys; I was not up again that day; I did not see Mrs. Byrne that day; there was dinner in the house that day at about 6 o'clock; it was later than usual; I cannot say

whether or not it was later than six; to the best of my opinion it was about six; one of the young gentlemen brought down the keys. On Monday, I did not go up to Mr. Byrne's room; I do not remember the youngest son bringing me down from the room anything on Monday; I laid cups and saucers for breakfast; I did not see Mr. or Mrs. Byrne on Monday; to the best of my opinion, I brought up no wine or spirits on Monday; on Tuesday the bell was rung at 7 o'clock; I knocked at Mr. Byrne's door and it was opened; Mr. Byrne's voice answered; he put out his arm and sent me for a pint of spirits; it was his left arm; he gave me money; the door was opened as wide as to let the bottle out; to the best of my opinion it was a pint bottle, but I brought a quart in; I bought it at Findlator's; the bottle was changed; I delayed about ten minutes; I came to the bed-room door; Mr. Byrne's voice came to it from within; I brought back 3d., he said I took my time, meaning I was too slow; I did not see him at either time; he put out his arm to take in the bottle; the arm was naked to the elbow; I went up in the evening and left cold water at the door; it was my custom to leave it at night; when I went up at that time, I did not knock at the door; I went up the next day; the bell was rung about 11 o'clock; the door was opened by Mrs. Byrne; she gave me directions to get a pint of rum; she did not give me money; I went and brought back the rum; Mrs. Byrne took it from me; she opened the door just enough to let the bottle in; I went again to the room that day; to the best of my opinion, I took up a boiled chicken between 1 and 2 o'clock; Mrs. Byrne desired me to bring it up; she gave me that direction about a quarter of an hour after I brought in the rum; I bought the chicken in Camden-street; it was dressed, and I took it up stairs; I was up again at the door that day with water about 7 o'clock; I did not hand anything else into the room but the chicken that day; the door was opened to the breadth of the tray; she put her side to the door, the way she could shut it, and took the tray in; she put her elbow to it; I could not see into the room; the room was dark; the window blind was down; to the best of my opinion I did not go to the room on Thursday; I bought some strawberries; on Thursday I bought more; I brought them up to the door on Wednesday, to the best of my opinion, after I brought up the chicken; I bought more on Thursday; Mrs. Byrne took them, she opened the door in the same way.

Mr. Brewster—Did you see Mrs. Byrne out of the room from Sunday up to that Thursday. Witness—I did, between Thursday and Wednesday.

Baron Pennefather—What do you mean by between Thursday and Wednesday? Witness—It was one or the other of these days; I did not see her going to her room or coming from it; I had some business to the gentlemen's rooms, and I heard her voice; she asked me what I wanted; she was on the bed.

To Mr. Brewster—I cannot say whether or not I brought any whiskey or wine to the room; on Friday I went up to the room about 10 o'clock; some fish came to the door, and I went up to see if Mrs. Byrne wanted to buy them; I saw her, she just came to the door, she looked at the fish; I did not hear Mr. Byrne's voice from Tuesday till he was found dead; the fish were three trout, and the woman wanted 10d. each for them, but Mrs. Byrne said she would not give more than 1s. for them; the woman left the fish; I went up for the 1s., but she said she had no change till next day; she did not open the door; I did not go up again that day; there were rashers dressed in the house on Thursday; I do not know what was done with the rashers; I saw something on the tray that I was told was rashers; I rapped at the door and gave them to Mrs. Byrne.

A Juror—Whether was it before or after you brought the strawberries?

Baron Pennefather—At first, he said he was not up at all on Thursday, he

afterwards said he had bought strawberries on Wednesday and Thursday, he did not say, he brought them up on Thursday.

Witness to Mr. Brewster—To the best of my opinion, I brought up strawberries on Thursday; I handed in the rashers on a different day from the chicken; I cannot say the exact days I brought in whiskey, there were not many days but I brought in more or less; I went up on the evening of Friday with water; I saw no body then; I observed no smell; I observed a smell on Saturday about a quarter before 1 o'clock; there was breakfast in the house that day; I recollect I brought up on that day two cups of tea, and two cuts of bread and butter, and a bottle of porter; to the best of my knowledge, I was not at Mr. Byrne's door before this; the bell rung, and I went up stairs; I saw Mrs. Byrne; I did not get any smell at that time; she was sober; when she bought the fish, she was sober but tossed; on Friday and Saturday she seemed sober.

Mr. Brewster—When you went up after the bell rung, recollect yourself, and tell me what she said to you?

Witness—She told me to bring up two cups of tea, and the gentlemen sent up two cuts of bread and butter with them; she received them from me; I went up again that day to go for dinner; I saw her then; she was going down from her own room; I met her on the second lobby coming down to where Mr. Byrne was; she opened the back drawing-room door and went in; she gave me directions for dinner the next day, and then she went into the room: when she went in, she shut the door immediately; I observed at that time a smell for the first time.

To Baron Pennefather—The voice I heard on Tuesday, when he put out his hand, was not his usual voice.

To Mr. Brewster—The door of Mr. Byrne has no handle; you cannot open it with a handle; she opened it with a key; I saw the key with her, she took it out of her pocket; I did not hear any noise in the room the week before he was found dead.

Cross-examined by Mr. Fitzgibbon, Q.C.—When I went to Mr. Lynch's I had not a pass-book, but it was got afterwards. On Tuesday I got the whiskey at Findlator's. I had the money for it that time. I got nothing at Findlator's but whiskey; he gave me 2s. 6d. for whiskey; I brought back 3d.; I paid 2s. 3d. for the whiskey; I cannot say that I brought in a bottle of whiskey the day before that; I cannot say, whether the bottle I got out was one he gave me on a former occasion, but he gave it to me out of his room by his bare arm. I am sure it was Mr. Byrne's arm, and I knew his voice—[pass-book handed witness]—that is the pass-book. I used to pay for the whiskey I got at Lynch's sometimes; I got it on tick on this occasion. On the former occasion when they were confined in her room in a drunken fit, liquor used to go up to them; they acted in the same manner as on this occasion; he was not out about the house in the former fits of drinking. She used to be out, but I have no recollection of seeing him.

Baron Pennefather.—You see, they did not act precisely in the same way.

Mr. Fitzgibbon.—Yes, my lord, he saw her out on the former occasion as on this; we have no evidence that they went outside the house on the former occasion.

Examination resumed.—I saw Mrs. Byrne out of her room and in other rooms of the house on the last occasion as well as on this. I did not see Mr. Byrne out of his room; I did not take him up water to shave; I did not take him up his boots in the morning; I did not brush his clothes; I went to the door and knocked, and was answered by Mrs. Byrne; she opened it; she did not open it wide; she did not allow me to see in on the former occasion, no more than on this; she used to take the things in in the same way. In the latter end

of the fit on the former occasion, Mr. Byrne answered me, not often—about two or three times at the latter end of the fit.

To a Juror.—That lock is different from the other, it would not stay open of itself.

Baron Pennefather—Could that door have remained in such a state that it could have remained ajar, not perfectly closed?

Witness—It might, my lord, but I never saw it except when closed.

Baron Pennefather—Do you recollect the day Mrs. Byrne was up in her own room?

Witness—Wednesday or Thursday.

Baron Pennefather—In what state was the door of Mrs. Byrne's room on that occasion?

Witness—It was as tight as it could be, I am certain of that.

Baron Pennefather—I am speaking, not of Saturday or Friday, when the fish was bought, or the Tuesday when the hand was put out of the room, but of the day after that latter day when you went up to the young gentlemen's room, and you heard her in her own room, which you say was either Wednesday or Thursday,—was the door of Mr. Byrne's room then open or shut?

Witness—It was shut, my lord.

Chief Justice—Did you look at it?

Witness—I did, my lord, it was shut as fast as I ever saw it shut.

Catherine Finigan examined by Mr. M'Kane—I was in the service of Mr. and Mrs. Byrne for three months; I remember Bellewstown races; I know his bedroom; I was at the door of it the Tuesday after the races; I did not know at what hour; I saw the mistress; she directed me to get ready some rashers; I got them ready; the boy brought them up; I was not up at that room door after till the following Tuesday; I perceived no smell in the room or in the house for that week; I saw my mistress on Saturday, on the top landing place at the young gentlemen's room. She said, she thought she gave me my weekly money on Monday; she only gave me a shilling, and in the week she sent the balance to me afterwards; these two times were the only times I saw her during the week, the servant boy brought me the balance of my week's money.

Cross-examined by Mr. Walsh—For the three months I was in the service, I was in my master's room but once, to clean it out; the door was always locked unless he was inside himself, when it would be on a half hinge; I cannot tell whether, if left to itself, it would remain so or not; the room was not carpeted.

To Baron Pennefather—I understood the door had a spring-latch, but I do not know if it had a porter besides to prevent it being on ajar.

To Mr. Walsh—If he did not make his bed himself, I am unable to say who made it; I knew of his being confined in the house in a similar manner besides the last time, about six weeks before it, he was confined in my mistress' room; during that time I did not see her door open; he kept my mistress' room beyond a week; my mistress was with him during that time in the room.

Arthur Harvey, Esq., examined by Mr. Martley, Q.C.—I am an apothecary; I live at Rathmines; I saw Mr. Byrne's body at Rathmines at about a quarter past seven o'clock on Saturday, 9th July; it was in the back drawing-room, lying on the back, the head towards the window, the feet inclined to the door; the head did not appear to be on the bolster; Mrs. Byrne was in the room, or rather met me at the door; I asked her, who was lying on the bed, she said, it was Mr. Byrne. I went round to the side of the bed, between the bed and the window, I looked at the body and said, he was dead; she said to me, see what you can do for him. She had a sponge in her hand and wiped with it the lower part of the abdomen, and then drew up the bed clothes over the body. The body was greatly swollen, the face was quite black, the tongue was out, and the right eye protruded; the tongue protruded beyond the teeth about half an inch,

the left eye was closed, the lips were swollen, the face quite black; there was blood issuing from the mouth and nose. I did not take any particular notice of the neck; I did not make any minute examination at that time; the body was going rapidly into a state of decomposition. From my professional knowledge, I should say, he was dead four or five days; I did not examine the body with such minuteness as to be able to form any opinion as to the cause of death. I do not recollect that Mrs. Byrne said any thing else with respect to her husband; I do not think I said any thing else.

Cross-examined by Mr. Hatchell—This was Saturday evening; it was not near night-fall; the body was quite bare as regards bed-clothes; I said, I thought that it might or must be four or five days; I do not mean to say it must inevitably have been. It is not in my experience or reading to say that a body would go into decomposition in thirty-six hours. I said, the tongue protruded half an inch beyond the teeth, as far as I could guess; I did not handle it at all; the only part I put my hand to was the leg and hand; the lips were contracted; I think the tongue had protruded beyond the lips, I will not swear positively, from my observation it had; one eye was closed, the other protruded. I was five minutes in the room; the body was quite exposed; there was an inside frock on the corpse and a Gansey frock.

A Juror—You said, he was bleeding from the mouth and nose, could he be bleeding from the mouth and nose, he having been five days dead?

Witness—My experience does not enable me to say.

Surgeon James Fox, examined by Mr. Brewster, Q.C.—I am a licentiate of the College of Surgeons of Dublin; I examined the body of the late Mr. Byrne, on Sunday, 10th July, the day after he was found dead; he was rather a corpulent man; he was not very tall, but a full man; I cannot say as to his height, about five feet eight inches; I cannot at all guess as to his weight; I should say he was a heavy man for his size; from the appearance of the body I could not say his age; I have met him once or twice; he appeared to me to be a young man; the body, when I saw it, was in an almost perfect state of putrefaction, the heart, the whole body was in the same state; the upper part of the body appeared more so than the limbs, the head, legs, chest, and arms, down as far as the loins, were in a high state of decomposition; the head and neck were most decomposed: there was not much difference between the head and neck, the black colour appeared to decline as it got down to the lower part of the neck; the face was quite black, the neck equally so; some parts of the neck appeared to be a black-bluish blue as it advanced; green is the first stage of decomposition you can see, the black is more advanced than the green. Judging from the appearances I have seen on the body I must say, I cannot be positive how long he was dead; we have not had opportunities of watching the different stages under different circumstances of bodies in a state of decomposition. I would decline answering the question; I could not form a positive opinion. The right eye was very much protruded; I would not say, that was a mark of death by any particular means.

Mr. Fitzgibbon objected to the question being put, as it related to the facts of the case and not to the witnesses scientific knowledge as a surgeon. The Court ruled, it was a legal question, and Mr. Fitzgibbon requested a note to be taken of his objection.

Question repeated—Is protrusion of the eye generally considered to be a mark of any particular kind of death, by scientific men?

Witness—The protrusion of the eye does take place in strangulation, but not to the extent in this case,—here the protrusion was more apparent than real; the eye was protruded between the lids; I would not infer, it was from strangulation. I can account for the protrusion of the eye. The body generally was in a state of gaseous decomposition, and if the eye does not protrude from vio-

lence, it must from something else. There is air collected in the cavity of the eye, which presses the eye-ball out. With reference to the left eye, the lids were closed, and the eye had a reddish appearance.

Mr. Brewster—As to the difference between the two eyes, would not putrefaction produce the same effect in one eye as in the other?

Witness—I have on my mind two cases. Only one eye protruded in each case, from the same cause of decomposition. In this case, decomposition appears to have taken place more on one side than on the left, and consequently the right eye was more likely to protrude in this case.

Mr. Brewster—With reference to the tongue, how was it?

Witness—It was protruded and flabby. The face and neck were much swollen, the body generally swollen. I think that was the result of decomposition.

Mr. Brewster—The tongue, you say, protruded,—is that a mark of any particular kind of death?

Witness—The tongue, if protruded, and thick and black, is looked on as a mark of death by strangulation; but in this case, it was thin and flabby. I do not conclude, therefore, that it was a mark of strangulation.

Mr. Brewster—Was there any positive discharge from the mouth, head, or nostrils?

Witness—There was a reddish thin serum, and the air escaping, came up by bubbles, the body lying on the back.

Mr. Brewster—Was, in the *post mortem* examination which you made, the blood fluid or coagulated?

Witness—I cannot say it was blood. The heart was empty, and the vessels of the brain were perfectly empty.

Mr. Brewster—You cannot answer any thing about the blood?

Witness—I should say it was fluid.

Mr. Brewster—Is fluidity of the blood considered a sign of a particular death?

Witness—In some cases it is. The opinion I entertain myself is, that the blood coagulates: in one case I decidedly met it; but “one swallow makes no summer.”

Mr. Fitzgibbon objected—You ought not to get out from this witness the opinions of other men.

Cross-examined by Mr. Hatchell, Q. C.—Assuming that the body had lain some time on its face in a warm bed, you stated that the upper parts had a black hue;—would not the gravitation of the fluids in the body create that discoloration? and would not that contribute to the protrusion of the tongue or eye?

Witness—Certainly.

Surgeon Andrew Ellis; examined by Mr. Curran—I am a member of the Royal College of Surgeons in Ireland, and one of the examiners. I have been connected with hospitals and schools of anatomy in Dublin for the last 15 years. I was called out to Rathmines to attend the *post mortem* examination.

Surgeons Fox, Mitchell, and Mr. Harvey were in attendance. I took down the notes on that occasion; the smell was most offensive; this was on Sunday, 10th July; the body presented the appearance of being much swollen and discoloured; the face, neck, chest, and part of the arms were much discoloured; the face and ears and upper parts of the neck were perfectly black, the lower part was of a dark green; there were maggots in the vicinity of the nostrils and angles of the mouth; the appearance of the head and neck was indicative of a very advanced stage of decomposition.

Mr. Curran—That was not the answer to my question. The question I asked you was, whether the colour you observed in the head and neck, and the advanced state of decomposition, are the usual appearances presented in a body which died from natural causes?

Mr. Hatchell objected to the question. The source of inquiry in this case is this, having given the gentleman as a competent witness to give an opinion

generally on the cause of death, to ask that question in reference generally to the appearance presented.

Baron Pennefather—Without deciding whether the question proposed is legal or not, I think the only question which it concerns us to have an answer to is, whether the appearances that he saw would lead him to a conclusion as to the cause of death?

Examination resumed by Mr. Curran—I observed both eyes, the right eye protruded, it advanced forward beyond its natural situation; the left eye held very much its natural position; it appeared rather full; it was necessary to separate the lids to get a view of the eye itself; the lips and teeth were separated, and the tongue protruded between the teeth half an inch; the face was tumefied and perfectly black; the vessels of the eye were distended with blood; I saw a sort of bloody mucus or serum coming from the mouth and nostrils; I cannot say there was any thing that could convey the idea of a stream; I observed the hands, the fingers were pressed up as it were in a state of semi-flexion; however, there are so many joints concerned, we cannot properly apply the term; I saw fœces on his person of rather firm consistence.

Mr. Curran—From all the appearances of the body that you have described, what would be your opinion as to the cause of death?

Witness—What I would infer is, that he died in a convulsive struggle; but what gave rise to this convulsive struggle, I am unable to determine. The protrusion of the eye and tongue, the expulsion of the fœculent matter from the bowels, and the curved state of the fingers, indicate that it (the struggle) took place immediately before death.

Baron Pennefather—And you said, you cannot say what was the cause of his death?

Witness—I cannot as a medical man.

Baron Pennefather—Could you take on you to form an opinion from these appearances, and stating as you have done, that the deceased died in a convulsive struggle, whether death was produced from natural causes simply?

Witness—Under the head of natural causes do you include disease?

Baron Pennefather—Yes, of course, and spirituous liquors; I mean without violence from another's hands.

Witness—There is one thing that might give rise to these appearances. If a person died in an epileptic fit, such appearances might be present, and putrefaction, supervening upon an individual having so died, would in a great degree account for the symptoms I have mentioned.

Chief-Justice—Am I to understand that as a qualified answer?

Witness—Yes, my lord, putting the things I have heard out of view altogether.

To Mr. Curran—I was present at the examination of the body; the appearance of the body was healthy with respect to the viscera.

Mr. Curran—Taking the internal appearance of the body as healthy, the absence of any appearance of disease, and the other appearances of the body when you saw it, could you come to an opinion, whether or not, the convulsive struggle might be produced by epilepsy?

Witness—I think it is possible to be the case. If I heard, that Mr. Byrne was subject to epileptic attacks, and was a member of that jury, I would give a verdict of acquittal in the present case.

Mr. Curran—To what would you attribute the death of the deceased from the several external appearances you saw at the *post mortem* examination you attended, from the facts of the case non-medical.

Mr. Hatchell objected—it must be on medical questions alone, the witness must give his opinion.

Baron Pennefather—He is to give his opinion from what he saw, from the

examination of the body, and the appearances presented to him, either to the sense of his sight, or smell, or any other sense. Now Surgeon Ellis, following that rule, and confining your observation to the appearance the body presented, answer the question.

Witness—I could not form a positive opinion, but my conjecture would be—

Mr. Hatchell—Oh, Surgeon Ellis, we do not want your conjecture. Give us your opinion or nothing.

Mr. Curran—The witness, being a medical man, is perfectly at liberty to a conjecture. No medical gentleman's opinion in such a case is more than a conjecture.

Baron Pennefather—I do not see how we can expect a decided and positive declaration from this gentleman. Every opinion partakes, in a certain degree, of the nature of a conjecture. He may give it as his opinion, and you may examine into the cause of it afterwards.

Mr. Curran—What is your opinion, from what you saw only—the external and internal appearances—what is your opinion was the cause of his death?

Witness—My opinion is, it was the result of violence. But that opinion does not amount to an absolute conviction in my own mind.

Mr. Curran—Could protrusion of the eye to the extent that you saw it be the result of decomposition?

Mr. Hatchell objected to the question.

Baron Pennefather—I think that is a fair question. One witness has sworn that it was the result of decomposition. I do not think that the counsel for the Crown are bound by a single answer.

Mr. Hatchell—As contrasted with former evidence, I yield.

Witness—I do not think it could. First judging from the anatomy of the parts connected with it. It is held in a bony socket, by four muscles of strong texture. Next, the optic nerve also would tend to prevent its protrusion from a trivial cause. Next, the socket contains a good deal of fat, and fat is not a substance that runs quickly into decomposition. Although I have a good deal of experience in anatomy, I never saw it, or read any author that has described it as the result of decomposition.

Mr. Curran—Could it be the result of gravitation?

Witness—Oh, certainly not.

Mr. Curran—Could protrusion of the tongue, to the extent you saw it, be either the result of putrefaction or gravitation or of both.

Witness—I never saw protrusion of the tongue arising from either cause, and from the consideration of this particular case, I am brought to the conclusion, that it was not the result of putrefaction or gravitation. I think it is exceedingly improbable. I do not think the tongue protruded by the operation of any mechanical process, by the head for instance lying on the face,—and in the case under consideration, when I saw the subject first, it was lying on its back, and the tongue out—it should have returned to its place if the protrusion was the result of gravitation. What I wish to convey is this, that if the tongue were influenced by the laws of gravitation, it should have receded, when the subject was placed on its back. If we admit the principle in one case, we must admit it in the other.

Mr. Curran—Taking every appearance of the body into consideration, the colour, smell, and so forth, how long in your opinion was Mr. Byrne dead before that Sunday?

Witness—I think four or five days. I state that as the minimum, the maximum might be above a week.

Mr. Curran—Was the blood coagulated?

Witness—No, it ran out freely when an incision was made across the scalp.

Mr. Curran—What is your opinion with respect to that?

Witness—In cases of sudden death, it is a general rule that the blood does

not coagulate. I am not prepared to say, whether or not the blood coagulates in cases of persons dying from epilepsy, as I never saw a person so dying, examined after death. In persons strangled or hung, or choaked, I would expect to find it fluid. There was a shirt and a web waistcoat on the body; I do not know whether they were discoloured or not, I paid little attention to them; I left them to Mr. Fox, I am therefore unable to give any testimony of importance with respect to the clothes.

Mr. Curran—With respect to the fœces which you said were hard or solid, what opinion would you come to from that?

Witness—That they were expelled in consequence of a violent convulsive effort before death.

Cross-examined by Mr. Fitzgibbon, Q. C.—As I collect your answer, you say that your conjecture, not amounting to a positive conviction, is, that the death was caused by violence?

Witness—No, that was not what I said. I said it was my opinion, but it did not amount to a conviction in my mind, that it arose from violence. Any violence so as to interrupt respiration might induce it.

Mr. Fitzgibbon—Then your opinion, such as it is, is that the proximate cause of his death was obstructed respiration?

Witness—Not the proximate cause in a physiological sense.

Mr. Fitzgibbon—But I mean the proximate external cause?

Witness—The stopping of the motion of the heart, and of the functions of the brain, were the proximate cause.

Mr. Fitzgibbon—But your opinion is, that the violence which caused his death must have been so exercised as to obstruct respiration?

Witness—Yes; if violence were used at all. That I take as an hypothetical question.

Baron Pennefather—That is, as I understand you, either strangulation or suffocation would produce it?

Mr. Fitzgibbon—Now, as I understand you, what has led you to that conclusion is the protrusion of the eye and tongue, the expulsion of the fœces, and the incurvation of the fingers?

Witness—These are the leading appearances that brought me to that conclusion; these and an excessive putrefaction of the head and face as compared with the abdomen, which usually runs into decomposition sooner. I have seen many cases of death by intoxication; I have read of some; it would not cause the four appearances I speak of.

Mr. Fitzgibbon—Suppose a person retiring to bed, and found dead in the morning, and that death clearly traced to drunkenness—could that beget any of these appearances that have led you to your conclusion?

Witness—I have read a case since the inquest, but I think it is not a conclusive one; it is doubtful whether or not the death was caused by intoxication only. I would not expect protrusion of the eye and tongue in a death by intoxication, unless it ended in convulsion, it might cause these effects; but convulsion is not the very commonest way of going out of the world when death is caused by intoxication. I was never present when a person was dying of intoxication. The third appearance I observed was the fingers being inflexed: I cannot swear positively as to the thumbs being inflexed; I would not form any strong deduction at all from the thumbs being inflexed, if not supported by other symptoms, and if it were not one of a group of other appearances.

Mr. Fitzgibbon—Suppose you had, together with the flexion of the thumbs, also protrusion of the eye and tongue—would you say, that flexion of the thumbs was a symptom?

Witness—Yes; I would infer, that that person died convulsed, whether that convulsion was produced by violence or not.

Mr. Fitzgibbon—Did you ever try to bend your thumb to the palm of your hand and keep your fingers straight?

Witness—If you illustrate it, I will tell you—(*laughter*).

Mr. Fitzgibbon—I think it does not require illustration; did you ever try to do it?—if not, try now?

Witness—I am not aware I ever made that interesting experiment (*laughter*). [Here Surgeon Ellis bent his thumb as requested].—Now, Mr. Fitzgibbon, there is a demonstration for you—(*laughter*).

Mr. Fitzgibbon—Do you do that without an effort?

Witness—No, not without an effort; the will is concerned.

Mr. Fitzgibbon—Yes, but a very slight effort of the will. Do you not think, that if you had not a very strong determination in your own mind to act contrary to the will, that the fingers would follow the thumb?

Witness—They might, although they are moved by independent members.

Mr. Fitzgibbon—You have read Dr. Oxtan's Treatise on Intoxication and its Effects; I believe I may say, he was a man of skill and authority?

Witness—I do not recollect hearing of his name, till Mr. Walsh told me of it. In 1833 I was a surgeon; I think the Medical and Surgical Journal is an excellent publication, it is in that, Oxtan's cases are contained; I will not swear I read all that volume, but I will swear I read all Oxtan's cases, after the inquest, not before.

Mr. Fitzgibbon—Mind, that is one good book you did not read before the inquest—(*laughter*).

“Case 5, was a woman of the name of Mary Robinson. In February, last year, her husband, fearing that the child which she was nursing might suffer from her intemperate habits, had it sent to nurse, on which she became so disconsolate, that to cheer her, he one evening presented her with a bottle of spirits; and of this, she and a neighbour took one or two glasses before going to bed. Her husband, who slept in an adjoining room, waking at three in the morning, recollecting that he had left the bottle in a cupboard in her bed-closet, and fearing that she might rise and take more of it, went to remove it out of her reach, when he found her stretched upon the bed with the bottle empty in her arms, and herself unconscious and breathing heavily. I was soon after called, and found her in the state described. A little of the liquor stained the bed-clothes, but whether spilt or vomited could not be known. She died in a quarter of an hour after the visit. At three in the afternoon of the same day, another medical gentleman and I were desired to inspect the body, in order to report the cause of Robinson's death. The surface was then generally very pale, with the exception of the lower part of the face, which was slightly livid, and the lips, which were blue. The mouth was twisted a little to one side, the tongue pushed out between the front teeth which were clenched on it, the protruding part being livid; the head was somewhat swollen, with an appearance of anxiety about the countenance.”

Mr. Brewster—I do not know whether this is legal or not.

Baron Pennefather—I have great doubts of it; I have already ordered beds for the jury for one night, but if this goes on, they must be ordered for the second night, if not for eighteen—(*laughter*).

Mr. Fitzgibbon—I cannot cut it short one second, my lord, but I will give no unnecessary delay.

Now, Surgeon Ellis, there is a death from drunkenness.

Witness—I think it is not so clear, that it was from drunkenness only. I mean it is not a satisfactory case; it is an equivocal case.

Mr. Fitzgibbon—Do you mean to tell me, it is not satisfactory as to the death of the person by drunkenness?

Witness—The answer I gave, my lord, was extorted by counsel from me. I do not like to appear an advocate one way or the other; I can give a reason why I do not consider it satisfactory. The husband and wife were on bad terms; they did not sleep together; the husband took the child from her lest it should be injured, and gave her a bottle of whiskey. I can conceive it possible, that he

might have half strangled her, left the empty bottle in the bed, and went for a doctor, thinking she was dead.

Mr. Fitzgibbon—On your oath, is that your opinion, your serious belief, of that case?

Witness—I did not think I came here to swear to the death of that person. I cannot form an opinion on it; I neither admit nor deny it.

Baron Pennefather—He is not satisfied, that sufficient caution was taken by the surgeon, to establish the fact that it was drunkenness she died of, and he thinks the surgeon might be imposed on. I think that to be his opinion.

Mr. Fitzgibbon—Mind, he was present at her death; she was alive when he came, consider that and say, do you abide by your answer, that she might have been first strangled by him, and that then he went for a doctor?

Witness—I said he might have half strangled her, and then have gone for a doctor.

Mr. Fitzgibbon—Listen to another case.

Case 8. A.W. came home one night in April last much intoxicated, as was his usual practice. Before he could be got to bed, he became sick and vomited a little, and afterwards, small quantities through the night. During the first part of the night, he was restless, slept little, and when awake, appeared confused, and unable and unwilling to give any account of his feelings. After this, he took more spirits; and toward morning, became very cold and fell into what was considered a sound sleep; but as he was soon observed to breathe heavily, and could not be awakened, his relations, becoming alarmed, called me in at nine o'clock. His chest began to heave convulsively; he threw out his arms rapidly, withdrawing them as suddenly; the lips became blue, and in a few minutes he expired. Some spasmodic twitchings of the muscles of the face were noticed, an instant or two before death.

Inspection of the body was allowed in twenty six hours after.

The thumbs were drawn in to the palms of the hands. The face was slightly livid and swollen. The tongue was pressed against the incisor teeth.

Witness—It is an isolated case, and I cannot draw any conclusion from it. A vascular scalp is usually present in a case of death by drowning, it might accompany death by drunkenness, it might be present in any case that would determine blood to the head.

Mr. Fitzgibbon—In that case, a vascular scalp was present. Now, did you ever dissect a body, the death of which was caused by violent suppression of breathing from without,—I include in that, drowning, suffocation, and strangulation.

Witness—Not to my knowledge, I may have done so in the course of my dissecting without knowing it.

Mr. Fitzgibbon—You may look at a clock and not know the hour. I ask you for a scientific answer.

Witness—Not that I know of.

Mr. Fitzgibbon—Then I may say, you do not know what effect a death of that kind would have upon the heart.

Witness—You would be wrong in drawing such a conclusion. I perfectly understand the subject as well as if I did. A man may be a very good astronomer and never have lived in the moon.

Mr. Fitzgibbon—And you believe that to be an answer to my question?—Allow me to tell you, that you are not entitled to open your mouth in that box, unless in answer to my question or in explanation. Did you inform yourself of the effect of drowning on the heart?

Witness—If you mean, did I make experiments, I did not; but as far as reading and understanding the functions of the human body, I did inform myself.

Mr. Fitzgibbon—Well, by reading, what is the effect of strangulation on the human heart.

Witness—If strangulation be carried out to death, the heart will cease to beat.

Mr. Fitzgibbon—It requires no doctor to tell us that. When that heart has ceased to beat and when you come to cut it, what is the effect of that mode of death on its contents?

Witness—Blood will be found in the right auricle ventricle of the heart of a person hanged, the left ventricle will be empty. I never dissected a person's heart who had been hanged; I have read many treatises on the subject, Taylor, Watson, and Beck. All these books treat of death by drowning and obstruction of respiration, the result is, that in these cases, there will be an accumulation of blood to the right side of the heart, the left being empty. In warm blooded animals, the heart is similar to the human, as a general rule, they discharge the same functions, and the same effects will follow from the strangulation of them as of a human being. All the books enumerated before treat of it; I read Coleman on suspended animation, a great many years ago, it is not much read now, he gives experiments on the drowning of cats and dogs.

Mr. Fitzgibbon—Do you know, that he tells you; the left ventricle of the heart is never empty when death is caused by one of these three means?

Witness—He does, but I think he was mistaken.

Mr. Fitzgibbon—Do you believe he tried the experiments he relates.

Witness—I suppose he did.

Mr. Fitzgibbon—Are you not as sure as you are that any other authority has stated truly?—Have you here the three authorities you have enumerated?

Mr. Brewster objected to this line of examination. The jury have no means of estimating the relative merits of these authors. We are not medical persons; the books may be very good or very bad; their authors may be very skilful or otherwise.

Mr. Fitzgibbon—The witness has stated that he never saw the heart of a drowned person dissected. He has said, his opinion is founded on what he has read in books, and I wish to refer to these books.

Baron Pennefather—It is not altogether from books. The opinion of a surgical man is formed from analogy, from what he observes, partly from books, and partly from the opinions of those with whom he is in the constant habit of intercourse.

Mr. Fitzgibbon—He says, it is founded on books, and I am entitled to ask him what books, with a view to his credit as a witness.

Baron Pennefather—He has answered that question, and referred you to the books. Is he to carry them in his pocket, and are we to examine him on them?

Chief Justice—Is he to be prepared to submit to such an examination? You will find it very difficult for professional men to come forward and give evidence in a court of justice, if they are to be submitted to such examinations.

Mr. Fitzgibbon—He ought to be sure that his opinion is well founded before he gives it.

Chief Justice—So he is; he gives it according to his skill and judgment. Your own sense, Mr. Fitzgibbon, will show you to set limits to the examination.

Examination resumed—In cases of natural decease, the left ventricle is empty of blood, and there is seldom much in the right either. Both the ventricles of the heart of the present subject were empty; but there is no difficulty in the explanation. It is a general rule, when putrefaction is carried on to a considerable extent, the gas which is generated thereby presses on the heart. In this particular instance the gas was contained within the pericardium, and the blood, being fluid, was expelled by pressure. I found it in the scalp. When it is expelled from the right auricle of the heart it goes into the lungs; it does not go into the aorta; that would be anatomically impossible. I would not expect to find blood in the heart of this subject, when putrefaction had so fully

set in, and the blood fluid. None but an ignorant person would expect it. I did not find it very close to the heart, but towards the surface of the body.

Mr. Fitzgibbon—Is it not through the aorta the blood is sent back to the lungs?

Witness—Certainly not. The aorta is not connected at all with the right ventricle. It is by the pulmonary arteries the blood passes to the lungs.

Mr. Fitzgibbon—Well, when the blood is driven out of the left ventricle, does it not *descend* by the aorta?

Witness—No; on the contrary, in the first instance it *ascends*. (*Laughter.*)

[Mr. Fitzgibbon was about examining the witness with reference to his deposition on the Coroner's inquest, but the Court ruled, that course could not be adopted unless Mr. Fitzgibbon made it evidence, and had it read, which he declined to do, as the evidence was so prolix.]

Mr. Fitzgibbon—I believe the four medical gentlemen who were examined at the inquest disagreed on the matter.

Mr. Brewster objected to the question, and said, I will produce Surgeon Brassington, and not Surgeon Mitchell; but if you call for him, he shall be in Court to be examined.

The Court ruled the question could not be put.

A Juror—I think you said, that it is your opinion, that the marks on the body were produced previous to death, and that it was in a convulsive struggle he died, and that that convulsive struggle might be produced by epilepsy? Would the previous habits of the man, drinking as it has been deposed to here, lead to epilepsy?

Witness—It might, if he were subject to previous attacks.

Baron Pennefather—Would you consider these habits would lead to an attack of epilepsy in a healthy subject?

Witness—I am unable to answer that question, my lord.

Baron Pennefather—You cannot say it would not?

Witness—No, my lord; I think it improbable in a person not predisposed to fits, but I cannot swear positively.

Re-examined by Mr. Curran—Was there any colour or appearance or smell of spirits of any kind in the stomach?

Mr. Fitzgibbon objected, as he said, he had asked no questions as to the contents of the stomach.

Baron Pennefather—He did examine as to the state of the viscera, and the Crown have a right to ask as to the state of the stomach.

Question repeated—There was no appearance or smell of spirits in the stomach?

Baron Pennefather—Do you mean to say that there was no appearance in the stomach of his having taken spirits lately?

Witness—Yes, my lord.

Baron Pennefather—Your opinion is, that he was dead some days?

Witness—Yes, my lord; and putrefaction having set in, all spirits and smell of spirits would vanish by that time.

To Mr. Curran—The liver was healthy.

Surgeon George Brassington examined by Mr. M'Donagh—I am a surgeon;

I saw the body of Mr Byrne; I saw a portion of the *post mortem* examination.

The body was lying on a bed, part of it turned round on the face. This was

Saturday night, 9th July, at 11 o'clock; I took hold of the left arm near the

wrist, and turned the body round on the back; the head and neck were swollen

and very dark-coloured; the head was more so than the neck; the right eye was

projecting; the left eye was covered by the lid; I did not observe the back at

all; there was a web shirt on the body; I did not observe any thing upon the

shirt; the examination I made of the body was but cursory; I expected to

return again to open the body; I did not till next day; I took hold of it by

the sleeve of the shirt, and turned it round; the body was dead some days; I

X would not venture on an opinion as to the number of days; under the circumstances of the case, protrusion of the right eye might be accounted for by decomposition; as to my medical opinion, protrusion of the eye is considered by writers on the subject as one of the signs of strangulation; I did not particularly observe the eye; I only saw the body again for a very short period on the day after; I was not able to form an opinion as to the cause to which his death was referrible. [This witness was not cross-examined.]

Dr. Harrison, examined by Mr. Brewster—I am a surgeon and professor of anatomy and surgery, in Trinity College; I was professor of anatomy in the College of Surgeons in Ireland for several years; I have been in Court during the examination of the three last witnesses especially; I attended carefully to the appearances they have described; I should attribute the protrusion of the right eye to the effect of muscular action previous to death; it is impossible, I think, it could proceed from gravitation; and decomposition, according to my experience, would have a totally opposite effect, as, whenever the human eye undergoes that change it becomes sunk in the socket, but never prominent. The protrusion of the tongue must have proceeded, I think, either from a convulsive muscular effort before death, or have been produced mechanically after; decomposition does not produce it, according to my experience. I have examined a great many bodies who have been hanged, when it was the custom to send criminals to the College of Surgeons for dissection. I have also seen three or four whose deaths were caused by drowning, but I do not recollect having seen any who died by suffocation. Taking all the circumstances I have heard deposed to here as to the appearances of the body, the eyes, the tongue, and fœces, I have come to two conclusions—first, that the body was dead some days; secondly, that he died suddenly, the death being attended with some convulsive struggle, but whether from an epileptic or apoplectic fit, or from any other cause, it is totally impossible for me to form a conjecture. If the body had been examined at an earlier period, the causes of death would have been more easily discoverable, because if it had been produced by suffocation, by means of stopping the nose and mouth, or by a ligature or strong pressure being applied to the throat, you would see the marks; but all such marks are done away, by the body undergoing decomposition; or if it were caused by epilepsy or apoplexy, we are in the dark also from lapse of time, as the brain, in which, in such a case, we should most probably have found some disorganization, was in such a state of decomposition that no evidence could be drawn from it. In all cases I have examined of persons hanged, and I have seen a great number, the blood was fluid, and continued fluid. The blood of those who die rather suddenly, in intoxication or epilepsy, is not, according to my experience, ever found fluid, and does not apparently differ from that of a person meeting an ordinary death. I recollect having seen a person in Baggot-street Hospital who was brought in by the police “dead drunk;” I examined the body of this man, and found it generally rather healthy as to structure, except that there was that appearance of the liver which drunkards present, but which does not necessarily shorten life; the general appearance was not similar to that of those who died suddenly from violence.

Mr. Brewster—Are bending of the fingers, protrusion of the eye and tongue, usual appearances in the bodies of those who died by intoxication?

Witness—It is a fact in medicine, that in cases of intoxication, the records of dissection are very various, and this indeed is to be expected. Many persons die in intoxication, and there is no injury of any organ observed, so much so, that a recent authority conceives, that persons often die in intoxication merely from the poisonous effect of spirits on the brain, without producing any disease or change of structure, something similar to a doze of opium.

Baron Pennefather—Does intoxication cause convulsions or fits?

Witness—If a child who has had epileptic fits becomes a drunkard, it is exceedingly apt to lead to a perpetuation of these fits, and a repetition of them at short intervals, and in one of these fits, death may occur. I cannot answer the question, whether intoxication necessarily makes men epileptic; I am not aware of the fact. It leads, of course, to disease of the brain, and to apoplexy; this is a common effect, and frequently, the death stroke of the drunkard is by apoplexy.

To the Chief-Justice—The blood in that case would not be found fluid, according to my experience.

Cross-examined by Mr. Hatchell, Q. C.—I believe the circulating system is brought into a very excited state by intoxication?

Witness—Yes.

Mr. Hatchell—Would not that call into action an apoplectic disposition, and that would lead to an epileptic fit, which would be accompanied by that convulsion?

Witness—Not necessarily, not always; it does occasionally happen, particularly if there was any tendency to epileptic fits in the earlier parts of life.

Mr. Hatchell—Now, a man that has been drinking ardent spirits two or three years, in a state of beastly intoxication, lying in a bed, would that bring on such a fit as that he might expire in convulsions?

Witness—It might, and I think in such a case, you would have some evidence of the cause of such an effect in the stomach, or in its contents.

Mr. Hatchell—But these evidences might have disappeared, if the drunkard died in a fit of intoxication, in consequence of a corrupt indulgence in liquor?

Witness—I would expect to find the bed-clothes or the dress saturated with the liquor, or the stomach filled with it.

Mr. Hatchell—After a lapse of time, do not the cases in books show that all appearances and smell of alcohol disappear?

Witness—Not constantly; I believe that liquor was found in some of those cases to which allusion has been made, the fact is sometimes as you have stated, but it is not in my own experience.

Mr. Hatchell—Suppose a man of extreme drunkenness lying in his bed, and having no one to attend to him, he being turned on his face in a helpless state of insensible intoxication,—is it not possible, nay probable, that he would suffocate himself?

Witness—I have heard of such cases, but never knew of them in my own experience.

Mr. Hatchell—Do not you know, that cases are put down, that such persons are suffocated by falling in the street or vomiting?

Witness—Yes; there are cases recorded, that persons lying on their back and discharging their stomach may be choaked; I have heard of such cases, but have not seen them; the latter is a case put by an eminent man; I do not think that it is possible.

Mr. Hatchell—May not very eminent men differ in opinion on any subject?

Witness—Unquestionably; in law or physic. Medicine is an uncertain science.

Baron Pennefather—You said, that in apoplexy, the blood does not continue liquid, as it does in death from hanging and lightning. You have heard the evidence given in this case, and I ask you, is it consistent with that state of the blood and the length of time which elapsed after death before the body was found, that this man might have died of apoplexy?

Witness—I have a difficulty in giving an answer, because the state of the blood has not been accurately detailed by the witnesses. The length of time that passed allowed the blood so to transude through the various parts of the body that I feel great reluctance to give a positive answer. The importance of the question makes me the more cautious. Drunkenness may end in apoplexy—that is one species of fit. The length of time that has elapsed has created such an effect on the brain, that it could not be ascertained by the examination of the brain whether he died of apoplexy, epilepsy, or other causes.

Baron Pennefather—Well, then, there is the state of the blood, which has been described as fluid in the scalp. Does that state of the blood forbid the supposition of death by apoplexy brought on by drinking, or any other cause?

Witness—That is an important question of a serious nature. It is almost too important to hazard any thing more than a mere opinion. But I would say, that these appearances are not the ordinary appearances of apoplexy.

Baron Pennefather—It is because of the importance of the question that I put it to an intelligent witness like yourself?

Witness—As far as my experience goes, I have not known blood to remain fluid in apoplexy. But in the case before me, there has not been much evidence of the blood being fluid. Blood may remain fluid in the small vessels in the scalp, and come out tinged with serum, and not perhaps be pure blood; and yet, in some other parts of the body, you may find solid, coagulated blood; and I therefore have not sufficient evidence as to the state of the blood in different parts of the body, so as to give that solemn question a positive answer.

Baron Pennefather—I agree with you, that that matter has not been examined with such minuteness as the case requires.

Surgeon Fox, re-examined—The blood was liquid in the scalp, and it appeared not to be contained in the vessels of the heart; it transuded from these vessels into the scalp. There was no blood in the large vessels of the heart, either coagulated or otherwise. There was a reddish serum about the scalp, and it appeared to me to be transuded blood from a suspended body. I did not examine farther than the vessels about the heart and brain. There was no blood in the arteries. In taking out the heart, we generally take the precaution of tying the arteries. In this case, it was so destitute of blood, that I took it out without taking that precaution. Blood becomes fluid in decomposition.

Surgeon Ellis, re-examined by Mr. Brewster—I was present when Surgeon Fox made an examination of the brain and parts about the heart of the deceased. There was no blood in the vessels of the heart. From the scalp it poured out in a fluid state; it was thin, black blood—the kind we generally find when a subject is putrid, and where there has been sudden death. I did not see a particle of coagulated blood at all. This might have been produced by decomposition to a certain extent. It is put down, that when blood coagulates, it liquifies again when decomposition sets in. It is utterly impossible to set limits to putrefaction.

To Mr Hatchell—Winter and the open air are unfavorable to decomposition; a close room and summer are favorable. I think it would be liquified in the cavity of the heart. Pressure would drive it away from the cavity of the heart.

Surgeon Harrison, re-examined—I have heard what these gentlemen have said. The body was in such a state that it would be difficult to decide from the state of the blood whether he died from epilepsy, apoplexy, or violence, because all evidence respecting the brain is taken away from us. Decomposition produces great alterations. Putrefaction always tends to soften all the tissues, and it will have also a great effect on the blood; it takes a long time, however, to liquify perfectly blood that has been coagulated; it would be impossible to give a decided opinion how long it would take, in this climate, for blood to liquify; I should not expect it in less than ten or twelve days.

Cross-examined by Mr. Hatchell—Suppose a body to be in a state of continued intoxication and insensible from drunkenness, lying on a bed in a room locked up, without any ventilation, in which any ventilation had not been admitted for a long period, covered up with clothes, and having died, suppose from drunkenness, what would you say might be the earliest period, decomposition would take place, from your own experience?

Witness—I have often seen decomposition set in in thirty-six hours, and sometimes in less, particularly about the abdomen; the fæces being in the bed with him would tend to accelerate putrefaction.

Dr. Geoghegan, Professor of Medical Jurisprudence in the Royal College of Surgeons, examined by Mr. McKane—I am a physician and a member of the College of Surgeons in Ireland; I have examined the stomach and part of the small intestine of the late Mr. Byrne, which were placed at my disposal by Surgeon Fox, under direction of the Coroner; I have also submitted to examination a portion of a sheet, stated to have been part of the latter on which the head of deceased lay. The stomach was empty, with the exception of a small seed, which appeared to be a strawberry seed; the stomach had no smell of liquor, nor any odour, except that of putrefaction; the portion of sheet exhaled a faint odour of fermented liquor; the stomach was in an advanced state of decomposition; its lining or mucous membrane was of a uniform dark red color, and presented no traces of ulceration or corrosion; the stomach had been opened; I cannot determine, whether the seed was taken in along with food, or was introduced after death; its presence in the organ affords *primâ facië* evidence that it was conveyed there as food.

Cross-examined by Mr. Fitzgibbon—I have observed the progress of putrefaction in a large number of bodies; I have been in Court during the whole of this trial, and have heard the circumstances under which the body of deceased was placed after death; considering them generally, I should say, they were favorable to putrefaction; I could not form any opinion, from the state of the stomach, how long deceased had been dead; I have examined the viscera of an individual from twenty-eight to thirty hours dead, (the thermometer at the time having been at 60°) which were, I should say, more advanced in putrefaction than the stomach of de-

eased. I received the stomach on the 11th of July; Mr. Fox stated, that it was that of Mr. Byrne; I also examined the portion of sheet, from which I obtained the soluble or extractive matter of meat (a matter similar to that contained in the gravy of meat), common salt, and traces of fatty matter; these substances were what I should have expected to have found if I had heard that the sheet had been vomited upon; the odour of liquor which it exhaled could not have been other than faint, after an exposure of three or four days to the open air in summer time; the protrusion of the eye was undoubtedly produced by putrefaction; I may mention, that I have satisfied myself by personal observation since the inquest that putrefaction can produce it. I obtained a subject, and placed it in circumstances favorable to putrefaction; on the sixth day, the eyes became rather prominent; on the eighth day, the right eye still more prominent, and the left actually protruded; I then dissected the parts under water in the presence of other medical gentlemen, and demonstrated the existence of air amongst the muscles of the eye-socket. I am decidedly of opinion, that the presence of air would be sufficient to cause protrusion; I should observe also, that in death by strangulation, or hanging, protrusion of the eye to the extent described as having been witnessed in Mr. Byrne's case, if it ever occur, is excessively rare; from my own observation and reading, I have not known an instance of one eye only having been protruded in strangulation; I can conceive it possible on hypothetical grounds, where strangulation is accompanied by suspension, that is in hanging; in that case, it would depend on the mode of pressure of the ligature; the pressure on the great venous trunks of the neck might be removed at the side of suspension, and consequently the protrusion of the eye at that side (according to the opinion which I entertain of its mode of production) would not take place. If the mouth and nose were closed, as in a person lying on his face on a bed, one eye only would not be protruded.

By the Chief-Justice—How do you account for the fact that protrusion had taken on one side, and not on the other?

Witness—From the body having lain on that side, and consequently, the blood, which is the most putrescible of the fluids, having gravitated to that side. It is also explicable by a circumstance observed during the *post mortem* examination, which did not appear in evidence.

Mr. Fitzgibbon—Does not the body, in a state of putrefaction, generate gas and air?

Witness—Not generally, the evolution of air depends on the temperature and the cause of death; in a warm temperature air would be generated.

Mr. Fitzgibbon—The beginning of July was very warm.

Chief-Justice—Suppose the body recumbent on one side, and that the pressure which caused death was applied to the side which was uppermost, would that produce protrusion of the eye of that side to a greater extent than in that of the other?

Witness—It is possible, my lord, but it is necessary to state, that by pressure exerted in such a direction, it would be exceedingly difficult to close the air passage.

To Mr. Brewster—What I have stated, as to the protrusion of the eye is the result of observation. The subject which I examined was a still-born child; on the eighth day the left eye protruded, the right eye was prominent; they both showed marks of having left their natural position; both had changed their position on the sixth day, but in a different degree; I did not dissect them till the eighth day; the eyes continued to project, the protrusion occurred on the eighth day; I will not undertake to state positively as to the day on which the eye first began to project, I think on the fourth day; I took notes on the last day of observation; I did not note the appearances as they occurred, but have a perfect recollection of the facts. The body, when I commenced my observations on it, had undergone a species of modified putrefaction, or rather maceration; the subject examined was born on the previous day, and had died before birth; a still-born child becomes putrid more rapidly than one which has come to maturity, lived for a day and then died; I should say more rapidly, but cannot state much more so; I was rather surprised at the slowness of putrefaction in the subject which I submitted to examination; I observed first, prominence of both eyes, and then protrusion of the left. Authors state, that the body of a child putrifies more rapidly than that of a man.

Joseph Finnamore examined by Mr. Curran—I am an inspector of police at Rathmines,—I recollect the 9th July; I was in Mr. Byrne's house; I saw the

body about half-past 11 o'clock at night; I was there next day at the *post mortem* examination; I believe, he had a shirt on him on Saturday night; it was greatly coloured with the appearance of blood all round the neck; I took no notice of it when I first saw it.

To Baron Pennefather—I got possession of the shirt on the 15th July.

To Mr Curran—I found the shirt then on the bed; I do not know when it was taken off the body; I was not in at the commencement of the *post mortem* examination.

Surgeon Fox, re-examined by Mr. Curran, as to the identity of the shirt—I took a shirt off the body before the *post mortem* examination; I believe, that was the shirt I gave to witness; I could not be positive; it was coloured with a reddish fluid mostly on the right side; the left side appeared rather clear; the back of the shirt contained greenish marks; I would say it was marked by the process of decomposition; I cannot be positive that both sleeves were on the shirt; it strikes me that one was deficient; I was brought next day to see it, and the tail of the front part appeared to have been taken off; as well as I recollect, in making the *post mortem* examination, I threw the shirt about; I got the shirt I gave witness on the bed; I could not say it was the same shirt.

Examination of *Inspector Finnamore* resumed—The shirt wanted an arm and also the front tail. (*Laughter.*)

[The Court did not consider the shirt identified.]

I recollect seeing Mrs. Byrne in her own house on the Sunday of the *post mortem* examination; we had some conversation.

To Mr. Hatchell—I did not threaten her or hold out any inducements to her; she was in custody of the police.

To Mr. Curran—She said to me, that he died on Saturday, some time in the day; that she heard a guggling noise in his throat, and that she called in one of her sons and sent for a doctor; she did not say what he died of.

James McCarthy, Esq., examined by Mr. Martley.—I am Coroner for the County of Dublin; On Saturday, 9th July, I saw Mrs. Byrne; she made a statement, committed it to writing; she came into the parlour; she was told she was in custody; I cautioned her not to say anything that might criminate herself; I took down the statement made by her; this is written in my own hand writing.—“On Thursday last Mr. Byrne sent the boy for a quart of whiskey, and the boy handed it to him. Mrs. Byrne said, he died on Friday between one and two o'clock; she said, she slept in his bed on Thursday and Friday night last.” I read that over to her afterwards.

Cross-examined by Mr. Hatchell.—I took down this at about half past eleven o'clock at night, in her own house; I had seen her twenty minutes before that in her own room; she was then, as if she had been after drinking, but not immediately, and I did not ask her to sign this paper, as I considered that she answered in an extraordinary manner; she appeared to be in an aberration of mind; to a stranger she would appear collected.

Mr. Hatchell—In fact you considered you did not know what she was saying.

Mr. John Wood examined by Mr. Brewster.—I knew Mr. Byrne for 20 years intimately well; I was in the constant habit of intercourse with him; I saw him frequently, he used to call in to see me; I never knew him to be subject to fits of any kind; I heard of his death on the 9th July; I went up to his house; I saw Mrs. Byrne; I asked her, where the key of Mr. Byrne's tin case was? She said she had them not, that he kept them himself, that they must have gone astray in the room; I do not recollect at present anything else that passed then; I was there next day; she was on the top lobby of the room where she slept; one of the police called me; I went up to Mrs. Byrne to bring her some turpentine that she might shake it in her own room to keep away the smell.

To Baron Pennefather.—This was Sunday, my lord, about 4 o'clock; I considered she was sober but frightened; she trembled.

The case for the crown here closed, and at that advanced hour of the evening, half past 6, the defence was deferred till the following day.

The jury were not permitted to separate, but were allowed beds and refreshment in the Enniskillen Hotel.

Chief Justice—Let the jury be taken proper care of; let them have comfort and respectability, but no conviviality. The jury were then escorted in charge of the special constables to the hotel.

Second Day.—Tuesday, 9th August, 1842.

This important trial was resumed this morning. The excitement seemed to have increased, and the vicinity of the Court-house was crowded at an early hour.

At a quarter past ten, the Judges took their seats on the bench. Mr. Peel, son of Sir Robert, Lord Cosmo Russell, and Mr. Parker, occupied seats next the Judges throughout the day.

The prisoner having been placed at the bar, the names of the Jury were called over and the case proceeded with.

Mr. Hatchell, Q.C., in addressing the Jury on the part of the prisoner, said—Gentlemen, in this case I am counsel for the prisoner, Mrs. Ellen Byrne; and this case now comes before you for final adjudication. Gentlemen of the jury, I think it but right to say, that we are fortunate in this circumstance, that the case here has been conducted on the part of the Crown, by the officer of the Crown, in a manner of which we have no right to complain. It was perfectly well known, that the subject of this trial had been previously investigated; and I shall only speak of it as having been so investigated in a novel and extraordinary manner, unprecedented, perhaps, in the history or annals of the law. I shall make no observation on the mode or manner of that investigation, or the species of evidence which was permitted to influence the decision of that case. I will only say, that it is quite impossible for any person that observes passing events, and it must, and I am sure did, strike my learned friend who conducted this prosecution, that the consequences of that verdict were prejudicial to my client—that it had been a subject of a popular delusion; that it must have affected the neighbourhood of that locality where it occurred, and to such an extent, that justice, perhaps, could not be done if persons living in the neighbourhood were allowed to assist in the investigation of this case. It is fortunate, therefore, and I now congratulate my learned friend and my client, that I address a tribunal, selected for the investigation of this case, who, I am perfectly satisfied, will come to the consideration of it with minds prepared to consider it only upon that which they are sworn to do, upon the evidence that has or shall be produced in this Court. Gentlemen, you are to decide this case upon your oaths, according to the evidence, and nothing else; and when I see the jury that are empanelled in that box, men of station, respectability, intelligence, and experience, I have no hesitation as to what will be the result. I have no hesitation in saying, that you will come to the consideration of the case, unaffected by anything you have heard out of Court, and uninfluenced by any feeling but to do justice between the Crown and the prisoner.

Gentlemen of the jury, I have adverted, as I have already said, to what occurred elsewhere; I trust, therefore, on that subject, I have said enough, and that we shall proceed to examine this case according to the principles of law and its rules of evidence, which are the best protection for our lives and properties.

Gentlemen of the jury, the charge against the unfortunate prisoner at the bar is a charge of the highest offence known to the law. It is a charge of murder, and as it has been well observed by my friend, Mr. Brewster, of an aggravated species of murder—the murder of a husband by his wife.—(The prisoner here became greatly affected and sobbed aloud).—Permit me to say, that this is a principle well recognized by the rules of the British law, that the more atrocious the crime charged is, and the more abhorrent to the natural feelings of our nature, the more improbable it is that it has been perpetrated; therefore, except you are satisfied, beyond all reasonable doubt, of the guilt of the party charged with the offence, I tell you, and I am sure I will be borne out by the high authority of the Court, that you are bound, not justified only, but bound by your oath to acquit that person. That is one principle of the law. Permit me also to observe this, that in arriving at that conclusion you are here not to be governed in the consideration of the verdict by the rules that determine verdicts in civil cases. In a case between subject and subject, a juror may balance the evidence and consider the preponderance of evidence on either side. They have to decide between party and party, and to give their verdict on that side on which the evidence preponderates. The rule is different in cases between the Crown and the subject; in criminal cases, you must be fully and fairly satisfied of the guilt of the party before you can convict. It is not a doubt of the innocence you are to entertain, but it must be a

conviction of the guilt; and if you have a doubt of that guilt, and if your mind is not brought to a clear and satisfactory conviction, you are bound to acquit the prisoner.

Having said so much, let us see what is the issue you have to try. The case—and that is not uncommon in a charge of this description—wears an extremely novel appearance. Gentlemen, in order to constitute the crime with which the prisoner is charged, first, it must appear, whether that crime has been committed at all. The charge here is, that this man died a violent death, and by the hands of the prisoner. Before you look to or consider the question by whom or by what hand that violence, if any existed, was committed, you must first consider, whether there was violence at all committed. If there was no violence committed, you have nothing to do with the case. I speak under the correction of the bench. If it was a natural death, then there was no need for the prosecution. If that man died, not by exterior violence, or if his death was not the result of violence, if it was natural, arising from some cause—from accident, from self-suffocation, from any other circumstance, or if it were a natural disease of any character, kind, or description—if thus his death happened, there is an end to the prosecution. Your minds must be satisfied beyond that doubt I have suggested to you, and you must come to the conclusion, beyond all uncertainty, that he died a violent death, before you consider the occasion by whom or by what means he suffered that death. The material issue and important inquiry, I have no hesitation in saying, in this case is this, whether you are satisfied upon the evidence you have heard, and the evidence you shall hear, whether that man met his death by violence imposed by another, or that he died a natural death, or from accident, self-suffocation, epilepsy, apoplexy, or any of the numerous other incidents that attend our nature. That is the question, and if you entertain a doubt on the subject, that consideration alone entitles the prisoner to an acquittal. Gentlemen of the jury, you may surmise what you like, and conjectures may be afloat, and suspicions entertained, but it is not by surmise, suspicion, or conjecture, you are to take away the life of your fellow-creature. It must be on evidence, full, fair, and satisfactory; that is the broad ground on which your evidence must rest; that is the basis upon which you must found your verdict; it must be sound and satisfactory evidence that you act upon, and nothing else. That is the law in criminal cases. I adopt the principle stated by my learned friend, there can be no question of it. Now, in considering that most important question, I think I may with safety also state, under the direction of the Court, that if it should appear in the evidence, even as it has been given, which I insist, it does appear here, that there is contradictory evidence arising upon the medical testimony as to the cause of death, that if that contradiction exists, and that you are satisfied of that contradiction, and that it is not fully and satisfactorily accounted for and explained, my client is entitled to an acquittal. Gentlemen of the jury, of that principle I think there can be no question. That has been laid down in some of the first law authorities of the land, and has been the result of the consideration of a case which was one of considerable notoriety. In advert- ing to what I have been stating, the preliminary, and in this case, the only question to be tried was, the cause of this person's death. In every case where there is a charge of homicide, it has been wisely, and necessarily, and fairly laid down as a preliminary consideration, that you must prove a murder committed, before a party is put upon his trial for the fact. You must prove that the person charged with having been killed, was, in point of fact killed, and killed by violent means. And one of the first criminal lawyers of his day, Lord Hale, lays it down that "no prisoner shall be convicted of a homicide unless the body be found; and that no man shall be convicted of stealing unless it is proved, that a felony was committed." And then the case goes on to show, that the principle necessarily required, on which to proceed, even where the body is found, and though the indication of a violent death be manifest upon it, is this—that still it shall be fully and satisfactorily proved, that the death was neither occasioned by natural causes, by accident, or by the act of the deceased. The case I refer to was that celebrated case the trial of Spencer Cowper, (reported in the State Trials,) who was tried for the murder of Sarah Stout. That case was fully argued. The most eminent medical men were examined, and the decision was—that a doubt having arisen on the conflicting evidence as to whether the death of the deceased was caused by her own act, or by

mere accident, or the act of another; that doubt alone was the ground for an acquittal.

Gentlemen, to maintain a case of this description, the Crown are bound to prove their case fully and satisfactorily. The evidence necessary in a case of this kind is of two descriptions—direct and positive evidence, and circumstantial evidence. In this case, there is no direct evidence of how that death was occasioned. Permit me here to call your attention to the evidence of every one of the medical men examined: that on that body, thus found in the place where life expired, there was no trace or mark of exterior violence on the person. The object of this investigation of those medical men was to discover the cause of that death. To discover whether it was natural or by violence. They examined every portion of the deceased man, and on no portion of his body was there any mark or trace of exterior violence, that is the ordinary evidence in ordinary cases that comes before a court of justice in every day practice. Here, I say, there is no direct evidence whatever from what cause that death ensued. Then they resort to circumstantial evidence—and the circumstantial evidence, as to the cause of that death, rests upon the opinion of those medical persons. It is a matter of opinion, not from facts put together, but from opinions arising from the indices or circumstances that appeared before them connected with the person of the deceased. Has there, I ask, been no difference of opinion even between the medical men examined on the part of the Crown? What is the evidence that the Crown has produced? Where is the satisfactory evidence which in this capital case, they have laid before the jury in order to convince you that there is no doubt but this man died a violent death? Where is the satisfactory evidence from which each and every man of you must be satisfied—that eleven of you should be satisfied—but every one of you must be satisfied without doubt that that death was caused by violence, and not by any of the natural causes suggested. Those medical men differ with each other—and, therefore, on the principle of the case to which I adverted, there ought to be an acquittal of the prisoner.

Without meaning to go minutely through the evidence of the five medical men that have been examined, I think it is perfectly plain, that after all their examination of the body of the deceased—after all their consideration of the question, not one of them was able to arrive at that conclusion, on which your verdict ought to be founded, or can tell what the cause of death was without a doubt. Not even Surgeon Ellis, who, though apparently an unwilling witness, and who came there with a prepared course of reading on the subject, could positively say so; because when he was pressed, he admitted, he could not come to a positive conclusion to his conviction, that he died a violent death.

Now, what are the grounds on which these medical men suggest to you that he died of a violent death?—(I am now confining myself to the evidence of the medical men)—what is the evidence? the protrusion of the eye and tongue, and the state of the blood, which appear to be the principal governing circumstances in the case. The putrescence is also adverted to by them, and by the counsel for the Crown, for the purpose of suggesting that the body must be dead for a certain time, and thus they endeavour to eke out circumstantial evidence as connected with the attendance of the prisoner on the deceased, and to show, that he must have been dead some time—that she was aware of that death, and ought to have communicated it.

But as to the appearance of the body which I have adverted to, how stands the evidence of the medical witnesses? Dr. Fox says he could not state there was the slightest evidence of a violent death—his opinion was to the contrary. And being, of course, asked his opinion with respect to this predominant appearance of the tongue and eyes, and the state of the blood he accounted for it on a different principle than that of violence, and says that it has arisen in natural cases of death from the state of the body and decomposition.

Why, Gentlemen, I would say, that without having any better evidence than these appearances, without a physician or surgeon being able to arrive at a conclusion on them, but resting on opinion only, if such evidence remained uncontradicted, the jury would not be safe to convict on such evidence, because from the appearance of the body, a violent death *might* have taken place.

The next medical man that was examined is Dr. Ellis. If I recollect his evidence right, (and you will go with me in it) when first he gave his testimony, he could not account for the nature of the death, whether it was a violent or a natural death. His qualified opinion was this, that the appearance of the body would be evidence of a muscular struggle, that when he died, he died of a convulsive struggle, as though even natural death may not be attended with a convulsive struggle, which may be the case in epilepsy, apoplexy, and in the various other diseases to which our frame is subject. Dr. Ellis being, by the examination of counsel, worked up to give his evidence, did arrive at the conclusion, that in his opinion, it was a violent death; but he hesitated afterwards, and qualified his answer, that it did not amount to a conviction on his mind, that he spoke as to the best of his opinion, that he only thought it was a violent death; that was the extent of his opinion,—and then, to sustain that opinion, he was examined as to the appearances of the body. Now, do not forget, that he came here to maintain that opinion to which he had pledged his oath on another occasion; his professional skill and character were at stake; they were pledged to that opinion he had given; he proved, he felt so, and he had studied to maintain that opinion, and he thought it his bounden duty to maintain it in this Court. You cannot forget, that one of his principal grounds for that opinion, which was a perfectly false and fallacious opinion, was, that a violent death must have taken place, because he found the tongue partially protruded through the teeth. The second was, that the right eye was protruded. He relies on this, that there must have been convulsive and violent death, and that it could not arise from natural causes; he had pledged himself to that opinion before being informed of the case which was opened to him on his cross-examination; he knew that his opinion was made public; he thought, that opinion had influence in another place; he thought it necessary to maintain it; he had prepared himself to maintain it here; and he found himself so trammelled by that opinion, that he was not shaken by the case of May Robinson, where all the witnesses concurred in the opinion that it was a case of death by drunkenness, in the awful position in which he stood, upon that solemn oath he had taken, with the subject of inquiry—of this important and awful inquiry under his eye, he did endeavour to maintain his own opinion and professional character by one of the greatest absurdities that ever came from the mouth of a medical man. It is discreditable for any professional man to do so; it would be more honourable, more independent, more to the advantage of his character, to say, “I was mistaken; I was not aware of that case, of that authority; I retract that opinion; and I do say, he might have died a natural death, though the tongue and the eye protruded; I am satisfied they ought not to govern me, and I confess I may have been mistaken.” Would not that be an honourable, fair course for a professional man to pursue? But no; he came into that box, and what was his answer to Mr. Fitzgibbon, as to the case which was the subject matter of consideration of the whole medical world, for the instruction of the whole medical world? Here was a case brought forward from one of the first sources of authority in the city of Edinburgh, from a man of the first eminence, writing for the profession, where his character was at stake, his professional knowledge known and appreciated, and acted upon; that able and distinguished man gives a case for the consideration of the medical world, which was thus stated ten years ago, never questioned, never made a subject of controversy, but that these appearances might be the phenomena of drunkenness; and what is the idle, the absurd, the ridiculous answer of Dr. Ellis?—that probably it was not a case of natural death from drunkenness at all, but the case perhaps of a man having murdered his wife! That is his observation on his oath, in that box!

What are the facts of the case? The man leaves his wife nursing her child—she gets possession of a bottle of spirits—the man thinks, that danger may arise, he gets from his bed and visits his wife—he finds her, having exhausted the spirits in the bottle, in a state of beastly intoxication, in danger of her life—he sends for a medical man—she dies from drunkenness almost immediately—the case is investigated in the presence of her friends and family, and is known to the medical world. It is treated as a case of drunkenness, and all the indices were found in the case of that woman analogous to what were found in this case; and because it countervenes with what he wishes to impress upon you, that he is infallible as to his opinion, he has the assurance to say, that was not a case of drunkenness. He presumes, that murder had been committed in that case, and that this

eminent physician was grossly imposed upon. I will, therefore, put Surgeon Ellis's evidence out of the question; he cannot be relied upon, he is a partizan in this case. Whether his feelings are enlisted in the cause of the relatives of the late Mr. Augustine Byrne, or from any other motives, or whether for the protection of his own character, I care not. I say, he was a partizan in that box, and gave his evidence as such. And if any thing could mark that more than any fact, it is this,—Remember the awful issue that we are trying—remember that on his opinion, gravely and deliberately given on his oath, was depending the life of a human being; and when he was asked, if he had examined any subject that died of strangulation, he said, no—of suffocation, no—of drowning, no. Then said my learned friend, you derive your opinion from what you read and not from experience? Yes, said he; but a man may be an astronomer without living in the moon. Was that answer creditable to a man in his position? I say, therefore, that I am not mistaken in putting forward Dr. Ellis as a partizan in this case, and as giving partizan evidence, however influenced he may be, so to say, in such a case as this, his evidence should be rejected altogether.

Who then was the next witness called? Surgeon Brassington was next called and examined, and I need not advert to that gentleman; he gave his evidence, calmly, fairly, and, like a professional gentleman, he said he could not tell the cause of death; he said, the protrusion of the right eye might arise from decomposition, but he was not able to give any opinion as to the cause of death; he found no marks of violence on the body; in his opinion, the body might have lain there two or three days in a state of putrefaction; but he gave an opinion with respect to the time for decomposition, and cautiously and properly said, that there could be no fair limits set in giving an opinion as to the decomposition. Here is the third witness for the Crown. Does he make the case clear to you beyond a doubt that he died a violent death? Does he not contradict Surgeon Ellis, and corroborate Surgeon Fox, the first witness called for the Crown? The next witness called was Dr. Harrison. There is no question that Dr. Harrison is a most eminent man, and a very distinguished member of society in his profession. He fills an important office in the College of Dublin, and he is, no doubt, an able man; but, let it be recollected, that Dr. Harrison was acting upon the report of others. He gave an opinion upon the subject, with respect to a body he had never seen. It is not pretended, that Dr. Harrison ever inspected this body; but, after all, when it came to be investigated, and by one of your lordships, it turned out, on a most important point of the case—the state of the blood—he could not give a decided opinion, because all the blood had not been examined, and it turned out upon re-examination of the persons who inspected the body, that a great portion of the body had not been examined with that view, and Dr. Fox, I think, stated, that if part of the blood was coagulated it would become fluid when putrescence had taken place. And yet you are called upon to say, that Dr. Harrison contradicts Surgeons Fox and Brassington, who did see the body, and that you should be inclined to draw the conclusion from his statement to you, that there was a violent struggle in this case at the time of the death. Why, there cannot be a doubt, that if a party died of apoplexy, and the body was examined, the very evidence would appear that appears in this case. It is not my intention to advert at any length to this medical part, but I beg to call your attention to this work in my hand (*Dr. Dease on Medical Jurisprudence*). I asked him questions with respect to this book; he was perfectly conversant with the work; he admitted its conclusions. Now, here is an extract. The writer says:—"I have been frequently called on in cases of death where poison was supposed to have been given, and after the most accurate anatomical investigation I never could decide, the appearances were so ambiguous. Should this appear extraordinary, it ought to be remembered that in all cases of sudden death (particularly if the deceased was of a full habit) the body swells, and suddenly turns putrid." Do not forget, Gentlemen, the evidence that was given with respect to Mr. Byrne, that he was a man of corpulent habits. That he was a man addicted to drinking fits, there can be no doubt, and, having a predisposition to apoplexy, the probability is, that he died of one of its convulsions. The writer proceeds to say—"Although this event may, in a shorter time, take place, and in a more extensive way, where poison has been administered, yet this is a matter involved in so much doubt, and depends so much on contingency, arising from season, situation, and various other circumstances, as to render it of

little weight in deciding on so important a point." Does not this show, to any ordinary understanding, that, in various instances, extravasation, a most important phenomenon, will take place in one body, and not in another?—and yet, with this opinion before you, Gentlemen of the jury, you are called upon to find a verdict, that this was a death caused by violent means, and by the hands of the prisoner at the bar. This book goes on to show—"Poisons of all kinds induce sudden putrefaction, and so do spirits, when drunk to such excess as to cause death." This book then goes on to describe the state of an unfortunate woman who terminated her life in a fit of drunkenness, and I will read it for you—"I remember the case of a woman accustomed to drink spirits in such quantities as to be almost continually drunk; the woman was found dead in her room. I was called a few hours after; she was then so putrid that I smelt her below stairs. On examining the body it was horribly inflated, bursting with putrefaction. The scarf skin peeled off with the slightest touch." I asked Dr. Harrison if he ever knew a case of this description, he said, probably it might occur, but he had not known such a case of his own experience; but he read of them, and they might have occurred. The writer then proceeds—"On opening the stomach, an alaceous smell, or that of garlic, was extremely perceptible. This convinced a gentleman present that arsenic had been administered. It was in vain I informed him, that arsenic, unless exposed to the action of fire, was inodorous. The family became alarmed—doubt and terror seized them. Providence directed me to a closer examination, and I found a box of assafœtida pills (which she usually took from time to time) in the window. This immediately so struck me, that I turned out the contents of the stomach into a basin, and found a pill undissolved. I need not mention from what impending misery a husband (who was the person suspected of having poisoned her) was saved." Now, in the present case, the deceased, having lain on his face, might be choked or suffocated from the smell or contents of his stomach when he had thrown it up. The next witness, then, was Dr. Geoghegan, who had examined the stomach—his evidence is very important, when he examined it, it was empty, but he found in it a small seed, which he thought to be a strawberry seed.

Baron Pennefather—A small seed, he said.

Mr. Hatchell—Which he thought was a strawberry seed.

Baron Pennefather—Did he say that?

Mr. Hatchell—Yes, my lord. I will pass that for the present, but it is a governing point in this case. The cloth that was under his head he stated had a strong odour of fermented liquor, and there was found in the stomach, particles of common salt and fatty matter; that was the result of the experiment he had made.

You will see hereafter the great importance of this evidence; but what is his evidence on the subject matter of medical opinion? Gentlemen, you saw Dr. Geoghegan in the box, and it occurred to me, he gave his evidence with a considerable degree of acquaintance with his profession. What did he say from his experience on another part of the case? Why, that he had known bodies to be decomposed in twenty-eight or thirty hours after death, (and I will satisfy you, beyond all doubt, that putrescence, decomposition, and bodily corruption must have arisen, under the circumstances of this case, in twenty-four hours), and, as to the protruding eye and tongue, Dr. Geoghegan said, he had no doubt on earth, that it was the effect of decomposition, and not the effect of any convulsive struggle at the time of death. How has Dr. Geoghegan supported his opinion? He tried the thing by actual experiment. He was aware, that there was a difference of opinion on the question, and he had since had a subject and examined it, and he was borne out by that examination, that protrusion of the eye and tongue was attributable to decomposition alone. What is the evidence here? why, that the right eye was protruded, and the left compressed. What was the position of this unfortunate man? He was lying on his right side—his right eye was next the bed, and the probability is, that putrefaction was produced by the filthy bed on which he was lying, and the gravitation of the fluids towards that portion of his person. Every one of the circumstances connected with the appearances, as derived from natural death, show that the causes which Dr. Geoghegan attributes to producing this effect in this eye, were putrefaction and decomposition alone.

Having observed on the evidence of the medical men, I will dismiss that part of the case with this observation. This is the circumstantial evidence on which the Crown relies to persuade you that that was a violent death. They ground their

case upon that hypothesis founded upon that evidence, contradictory as it is—inconsistent as it is; and I may venture to say, that, on that evidence alone, no jury on earth would convict a person of a capital offence; for it is impossible, that that evidence, according to the known principles of the law, could be satisfactory to any tribunal. But, Gentlemen, there is this known principle of the law with reference to that circumstantial evidence, and every circumstantial evidence, that if the case which is made out on such circumstantial evidence can be consistent with any other hypothesis besides the hypothesis on which the conviction is sought to be grounded, the jury are bound to acquit the prisoner, and not act on such evidence. To make circumstantial evidence satisfactory proof, the facts must be consistent with the hypothesis sought to be established, and with that alone, exclusive of and inconsistent with any other mode that could be devised; so, to ground a verdict for a conviction on the hypothesis from the circumstantial evidence that this was a violent death, I say, on grounds of law, it must be inconsistent with every other cause. It was on this principle that the case of the murder of Mrs. Stout was decided, because it was not circumstantial evidence, exclusively consistent with that hypothesis alone: it was consistent with other hypothesis—namely, that the death occurred by accident, or self-destruction, or other natural causes that might be suggested; and here, if death *could* have arisen by accident, apoplexy, or other causes, though the doctors agreed that one cause of death might be a violent one, I say, that the hypothesis is not sustained, and that you cannot find a verdict on such a hypothesis. I will read, in support of that view of the case, this passage from Starkey's Book on Evidence. He says:—"It is essential, that the circumstances should be of a conclusive nature and tendency. Evidence is always indefinite and inconclusive, when it raises no more than a limited probability in favour of the fact, as compared with some definite probability against it, whether the precise proposition can or cannot be ascertained. It is, on the other hand, of a conclusive nature and tendency, when the probability in favour of the hypothesis exceeds all limits of an arithmetical or moral nature." So, you see, Gentlemen, it is on proof, and proof alone, and not on probability, however great, that you will be warranted in finding a verdict of conviction here. That is laid down by one of the highest authorities in the land as the governing principle in criminal cases. The hypothesis here is put forward on the evidence of those medical men, differing with each other, and three of them contradicting the principal witness, who took upon him to give a piece of testimony, that this was a violent death. The sole question to be decided in this case is, whether this death was a violent or a natural death? and I would say, Gentlemen of the jury, with great respect, that that preliminary question being disposed of, by your not being able to find that it was a violent death, and your not being able to find that, without doubt, that it ought to terminate the case, and that I am entitled to an acquittal.

Now, Gentlemen, having disposed of that part of the case, I am perfectly aware, that, independent of the medical persons, my learned friends for the Crown, and your lordships may say, that there is other circumstantial evidence in this case which applies to this issue. The first issue is, was there a violent death, and the only evidence applicable to that is the evidence of the medical men, who must first establish a violent death. No matter how inconsistent, incongruous, mysterious, or suspicious the conduct of the person sought to be charged is, I say, that is a consideration you are not to enter into. The question is, did he die a natural or violent death? If he died a natural death, I ask why should this poor woman be put on her trial? She committed no offence. My learned friend for the Crown fairly said, you are not to try her for drunkenness. Her conduct, let it be strange, stupid, let it be even apparently inconsistent, (though I will satisfy you that it was not). Gentlemen, the circumstances of the case were uncommon, unprecedented almost, and singular beyond all previous experience. I am now adverting to the other circumstances of the case. I was endeavouring to show, that unless a violent death is established, there is nothing in the case. But here is a question for the jury. We have an inimitable doctor, an infallible professional man, Dr. Ellis, who gives a probable, qualified opinion; but none of the other medical men can venture to go so far; they explain all appearances on another hypothesis, and on other grounds; they say, the grounds on which they rest their evidence is, that there are no marks of violence, no evidence of a violent death; they put forward theories which are consistent with

the idea, that it might be a natural, not a violent death; but Dr. Ellis gives a qualified opinion, that there was a convulsive struggle; it may be, said he, but it does not amount to a conviction on my mind.

But the counsel for the Crown say, how do you account for her conduct? the death, say they, must be violent, although there is no evidence of it; and why? because the prisoner at the bar was associated with her husband, and about his person!

Now, I will take it in this way,—supposing she knew of his death and concealed it. Viewing this case in a calm, considerate way, divested of previous or popular prejudices, as men of sense, men of intellect, as jurors in your character and importance, in your awful and sworn position as jurors, I say, is there any thing in this case, from the condition of this woman as thus suggested, to show you, that she knew of his death for two or three days, that she concealed that death, and that that death was caused by violence, that it must have been by violence, not accident, violence from *malice prepense*, with an intent to murder the husband she loved, and married from affection, and with whom she lived on endearing terms, except on these unfortunate occasions, when drunkenness produced scolding and quarrelling! And you are called on to presume, that she perpetrated that atrocious crime, abhorrent to human nature, without a motive that I can discover in this case! They are calling that in aid, for what purpose? to support Dr. Ellis against Drs. Harrison, Fox, Brassington, and Geoghegan.

Mr. Martley—Not the entire of them.

Mr. Hatchell—My learned friend says, not the entire of them. Then I will make him a present of one of the other doctors, and I have three against two. They say they have established, that this body must be dead three or four days; and, having been dead three or four days, from the state of putrefaction in which it was found, they say, this woman must be cognizant of the fact, and therefore, if she concealed it, she must be a party to some violent means by which that man met his death.

Let me just call your attention to what the nature of the charge is, because it involves, in this part of the case, the charge of murder against the individual at the bar, seeking to maintain, at the same time by the evidence of that charge, the fact of the death having been a violent one. Why, Gentlemen of the jury, in ordinary cases of this species of charge, arising from the presumption, that the party charged committed the offence, the first inquiry to be made is this—what motive had the prisoner to commit the murder? What motive, I ask, had the wife in this case to murder her husband? Where do we find the evidence here of any motive? What was the nature of their domestic association? My friend, Mr. Brewster, stated, which I believed to be the fact, that she married Mr. Byrne in '33. Her sons, those unhappy young men, who, as Mr. Brewster has well stated, were forced into the box to give their testimony in this case against the life of their mother—stated that they lived upon good terms except when those scenes of drunkenness occurred, that they kept separate rooms, but they occasionally cohabited; and, when they were sober, and in their senses, they were kind and affectionate towards each other; but when they were drunk, and in the absence of all knowledge or consciousness of their condition, they might be arguing and brawling, but there never was a blow struck. Are you to find a woman guilty of having murdered her husband on this provocation—that when they were drunk together, they had an argument?

Gentlemen, I tell you, the law lays down this, that the absence of motive is a strong proof of innocence. A governing motive is the first thing to look for, and what motive had the prisoner to commit this heinous crime, for which her life might be forfeited? Why, he was attentive to his step-children, and they appeared to be fond of him, for they did not like to disturb him in his orgies, lest it should displease him. They seemed, in fact, to respect even his vices, and the youngest of the three boys spoke with a degree of fondness of him, and called him *dada*. Had she any reason to be displeased with the husband she had married for love, for any misconduct towards her children, and would that be an adequate cause for depriving him of his life? Was there any cause of jealousy assigned, or any other cause that would warrant the conclusion, that this unfortunate and wretched woman was guilty of the murder of her own husband? No, I defy the Crown to put a finger on a particle of evidence to show a motive, a governing motive in this case, which is necessary in every case of homicide.

It is happy for the administration of justice, that the responsible officers of the Crown should interpose between any private and vindictive feeling that might be carried into the prosecution, and thus, the high character of the persons who conduct the prosecution protect the prisoner from any sinister interference with the trial. Justice is the only object to be attained—that is to be sought by legitimate means, and the man would be unworthy to wear his gown who did not bring forward every fact connected with the case, and bring the party to justice, if he were guilty, or have him acquitted in the face of the country if he were innocent. I turn back to the subject and say, what, after all, is the evidence of this woman's motive? What is her history? I stated a portion of it, and what I am now obliged to state, I state it with regret, because it reflects dishonour on that family, of which, I must admit, she is a discreditable member. They lived in the ordinary habits of association. This unfortunate man, who brought death on his own head by his own misconduct, was occasionally temperate, but more frequently drunk. His habits of intoxication, when once commenced, ending in the prostration of the faculties and of the dignity of our nature, and descending to a state of debasement which I think is hard to be found equalled. What were his habits in life? Were they not filthy, base and degrading to any man pretending to hold a respectable position in society? Though he is dead, I am obliged thus to speak of him, because it is necessary for the case of my client. He had his room locked, and permitted no access to it for the purpose of ordinary cleanliness. He made his own bed—he lay in his own clothes—he was, I might say, a systematic drunkard, with only occasional fits of sobriety. This is the case with this species of drunkards; the man becomes infected at a particular time, at a particular season his habits come upon him, love of drink prevails, and when infected with the poison, he becomes a confirmed, stupid, beastly drunkard till the fit terminates. What was the observation of the young men, the sons of the prisoner? It was this—they thought the fit the deceased was indulging in was so like what he had previously indulged in, that they did not inquire for him. They said, if they found him on the floor in a state of insensibility, they would not interfere, because if they had discovered him in that state it would excite his anger, and, therefore, they would not interfere with his position to remove him to bed. To this theatre, where he used to celebrate his orgies, he came home from the Bellewston races, and commenced one of those fits. He had been drinking to intoxication, he came home at 11 o'clock, sent for a bottle of whiskey, and drank it during the night. He made an effort to come down on the following day, and got his coat brushed, but he disappeared before dinner, and from that moment was not seen out of his room. He went up stairs—his wife accompanied him, but where was the malice or the motive of destruction in that? She was unfortunately attached to the same habits that he was. Is not that circumstance to be taken into account? It may be said, that it was disgraceful in a female to be attached to such habits; but recollect, that her husband, who should have been her protector and guardian, who should have controlled, corrected, and warned her against the effects of such vices, indulged in that vice himself, and being associated with him in the last fit, has paid the penalty by being put on her trial for her life. Now, I will take up her conduct during that week. He went to his room, she necessarily accompanied him, because it was the usual custom, when he had recourse to those fits of drunkenness, that she should become his constant and inseparable companion, no other person being allowed to have access to him—no other persons daring to put their feet within the room where this drunken scene was occurring. But was it always confined to his room? No; it appeared that on former occasions, it occurred in her room. Wherever he fell, there he lay, and continued until the fit was over. On this occasion, it appears that, on that Friday, he did not dine or sup with the family, and he was found on his bed the next day (Saturday) in his room. He is found in his room drunk on Saturday, and drink went in every day to the room: sherry, spirits, and porter. The servant stated, that the liquor was so constantly coming in, that he could not state what came in on that particular day, it was thus they lived on these occasions, they had no other enjoyment but spirits, which was poison. On Sunday we find him in a brutal state of intoxication, lying on his back in his bed, his wife being his constant companion, and no person allowed to go inside the door, for she guarded the threshold. On that sacred day, he lay thus in a state of intoxication, and she was almost in an equal

state of drunkenness. Remember what occurred. The family wanted the keys for dinner, the servant went up for them, but returned, and said she could not get access to the room. The son then went up, but could not get them. He proceeded to expostulate with her, and she fell on the floor, she was in such a state of drunkenness, and then one of her sons stepped across the body and took the keys. Very little appears to have taken place on Monday; I take for granted, that they drank largely of whiskey and porter, I suppose they were in a state of stupor and insensibility, and then we have the transactions of Tuesday. On Tuesday, she does not appear. I suppose she was overcome with liquor. The servant goes to the door, and he desires him to go for whiskey, he gives the servant a pint bottle, and he brings back a quart from Findlater's. His wish appeared to be, when in this state, to conceal himself. He therefore put out his hand to receive the whiskey, and so intense was his thirst for this dreadful liquor, that he complained of the length of the man's absence, and said "he took his time to get it." There we find him on that day, with a fresh supply of this poison for himself and his wife: we find them in that state of base and filthy cohabitation, in that room, without allowing any person to clean or ventilate it. Is there any ground then to say, that she entertained malice against him, or a desire to take away his life? On Wednesday she came to the door to receive something in the nature of food. There was a question, whether the rashers were brought up on that or the following day, but that is not material; but we have this evidence, that he was getting in spirits in this quantity on the Tuesday. The counsel for the Crown thought it to be their duty to show, by the evidence of Mr. Barry, that there was some moaning and groaning, and loud words or quarrelling between them on the Sunday night. My learned friend did not mean to suggest a case of manslaughter, he said it was murder or nothing, and I do not seek to take refuge in such a verdict as that; I claim for my client your free acquittal from the diabolical charge of having murdered her husband. On Wednesday what took place? We find him alive on Tuesday—there can be no mistake of that; but what took place on Wednesday? My learned friend fairly said, that in his opinion, the witnesses connected with that establishment were disposed to tell the truth, there is no attempt to impeach them. On that day, some rashers were sent up, and some strawberries were sent into the room. Talt swears, that the strawberries were sent up on Thursday, and you are bound to put the best construction on the case. The slightest circumstance in these cases may be of the highest importance. The smallest particle of evidence is to be looked after with the greatest consideration in a capital charge. You have the evidence of Dr. Geohegan that in the stomach of this unfortunate man was found the seed of a strawberry, and must he not have been alive on Wednesday, or Thursday, I will say, when he eat that strawberry? I must tell you, that one seed of one strawberry is as good for the purpose of evidence as if there were five thousand. Now, Gentlemen, is there any ground for saying, that he was not living on Wednesday or on Thursday, and that this dreadful imputation, seeking to clothe this unfortunate woman with the death of her husband is groundless in the extreme? She was, no doubt, closeted with him in that room of filth. What took place then? On Thursday, it was proved, a large quart of whiskey went in, and that some strawberries were brought in, of which he partook, and a seed of which was found by Dr. Geoghegan five or six days after. Gentlemen of the jury, is it not this, she was in a state of beastly, stupid drunkenness, she appeared to have little intercourse with the family, the room partly darkened, he stretched in that bed in filth and abomination. On Friday, she appears, and the circumstance is adverted to to show, that she, to all appearance, was sober, and that she gave directions. Why, that is not inconsistent with the facts and circumstances of the case. If she supposed he was buried in this state of stupefaction, this drunken sleep in which she herself was involved, is it not likely, she should give some mechanical instructions; and when that was done, that she should close the door on him, and retire again to her resting place in a corner of that filthy floor, stupified with drink. What takes place on Saturday, a most important matter in the case, on that day, on the Saturday following, she appears to have some communication with some of the persons in the house, and some tea is sent up to her. Now that is very important.

Baron Pennefather—She ordered two cups of tea.

Mr. Hatchell—Yes, my lord, and I think that of the least importance. Just,

in the name of God, look at the position of this woman—consider her state and capacity, and how she was employed during the week—consider how little she was eating, and how much she was drinking, and are you prepared to say, that the wretched woman was carrying on a scheme of dexterous management to conceal the death of this unfortunate man, by the cunning expedients that would mark the conduct of a practised culprit, seeking to conceal the crime of which he was guilty? Remember the evidence of Mr. M'Carthy, the Coroner? Why, Gentlemen of the jury, he stated, that on the evening when he spoke to her, on Saturday, to all appearance she might not be drunk, but that she was insensible, and did not know what she was doing. That is plain from the evidence of Mr. M'Carthy. He asked her, by virtue of his office of Coroner, to account for herself. She said, he died on Friday; that she sent for the doctor on Friday, and that the doctor came to visit him on Friday—and he put that down. This is the ordinary evidence that convicts culprits in giving an account of themselves. But, said Mr. M'Carthy, I believe that was perfectly false—that the man did not die on Friday, nor did the doctor attend him on Friday—and I would not allow her to sign the paper; and he added, I consider the woman was speaking under a total aberration of mind.

Baron Pennefather—I understood Dr. M'Carthy to state, not that he thought what she spoke to be untrue; but that he did not like to receive her statement in the state she was at the time.

Mr. Hatchell—That is more favourable to the prisoner, my lord. He would not allow her to sign this, as a document that ought to prevail against her, and, therefore, are you to suppose that a person in that state arising from a week's drunken indulgence was in the possession of her senses on the Friday. So that if he died then, she might not discover his death till Saturday. There is another point that amounts almost to conclusive evidence of her innocence. When she gave that account to Dr. M'Carthy, she was plainly in a state of unconsciousness. She is asked by Mr. Barry, when he died, she said on Saturday, that is, she discovered he died on Saturday, and when she discovered he was dead, and no longer in that drunken trance which he might have been on a variety of occasions wrapt in for forty-eight hours, undisturbed; and it will be proved to you it was not an uncommon thing for him to be so for that long period; but take it at twenty-four hours, undisturbed—being startled by some movement, she became alarmed and called for her son, who came up about some business, and she desired him to turn him from off his face. Was there anything like guilt in that?—would not any of you, under similar circumstances, have done the same thing? Supposing that death had just occurred, and you had just discovered it, is not that exclamation “He died on Saturday,” perfectly consistent with that state of things? They observe discolourization in his ear, and they say, he is dead, and she says, “Oh no; he is not, send for a doctor!” To whom did she address that exclamation? To her own son. Was that affectation? it must have been, if not sincere. If she were a guilty culprit, would she not ask the aid of her sons to conceal the body, or take some steps to cover her guilt? but she gives utterance, to the natural expression, “It cannot be; send for the doctor!” And when Doctor Harvey came, does she abstain from approaching where the corpse was? Is there not a feeling of dislike amongst culprits to approach the body of the person they have murdered? She at once approached the place where the body lay, and asked Dr. Harvey “if he could do anything for him?” Look at that state of unconscious stupefaction! What does she next do? She takes a sponge, and, uninfluenced by the presence of a stranger, she sponges the body of her deceased husband before that stranger, and it lying in a state of total nakedness! Is that affectation? It is said, if he was only dead two or three hours, why take that proceeding? All this is for your consideration. But observe, another circumstance was stated. When they talked of the colour of the body, that she said, “Oh, it was in that state five minutes after his death.” That was put forward as something damnatory of her case. I say, it is conclusive of her innocence. When Dr. Harvey came to him he said, he could do nothing. In about five minutes afterwards, she saw him, and, thinking he was only dead five minutes, she subsequently said that he was that colour five minutes after his death. Now, Gentlemen of the jury, remember that circumstance? Is it not powerful evidence in which you are to judge, whether these things are to be called in aid to find a verdict of conviction? Remember, when she said that, it was the day after the death, at the time of the *post mortem* exa-

mination, when she had had sufficient time to collect herself, and must have even gathered the opinions of some persons around her. She thought, she was certain, he died on Saturday, and that he was that colour five minutes after he had died. Gentlemen of the jury, I do contend, that some of the doctors who have been examined, have given their opinions most cautiously in their evidence as to the time of the death, arising from the putrefaction of the body; some of them said, they could not tell when he died, and others said, it might be four or five days. But I do not think any of them ventured to say *it must be* four or five days. I do not think, they could be so ignorant of their profession as to make that assertion, for our attention has been drawn to a case, which will be corroborated by evidence of high character, that putrefaction will take place within twenty-four hours, in twelve hours, in six—aye, while the body is living, and while the mouth is accounting for the approaching death, the maggots are crawling in the body! I will mention a case that will be corroborated by the evidence of medical men—a case that occurred in your own neighbourhood, and in your own county. Here is a case of an awful visitation. It is a disgusting narrative, and was the result of drunkenness. I take it from “Fonblanque’s Medical Jurisprudence”:—“In the month of July, 1809, a man was found near Finglas, in Ireland, lying under a wall of a lime-kiln, at an early hour in the evening, with his face upon the ground, apparently dead. On turning him upon his back to ascertain the real cause of the death, it was discovered, that he was yet alive, but under the most appalling circumstances. On removing his coat, the whole surface of his body appeared to be a moving mass of worms. His face was considerably injured, as if from a fall or bruises: his eyes were dissolved, and their cavities, as well as those of the ears, nose, and mouth, were filled with a white living mass, from which innumerable quantities of maggots were continually pouring out, that the skull seemed to be filled with nothing else. After some time, he recovered strength enough to walk, and regained recollection and voice sufficient to tell who he was, where he lived, and how he had been brought into that situation. It appeared, he was returning home upon a car the evening before; having drank to excess, he fell off and remained in a state of insensibility until he was discovered. He could neither account for the wounds in his head, nor for his being so far from the road; but it appeared probable, that he had received the contusion from the fall, and had insensibly crawled to the place where he lay. It was conjectured, that the state of the atmosphere, as to humidity and temperature, had brought on a solution of the solids in the bruised parts, already disposed to putrescency, and now in close contact with the moist earth. In these, the eggs of numerous insects being deposited, their generation proceeded with rapidity under circumstances so favorable. Every attention was paid to the unfortunate individual; he was removed to shelter, the parts were washed with spirits and vinegar, and the loathsome objects removed, as far as was possible. Cordials were poured down his throat, but he swallowed with difficulty; and in a very short time, spasms took place, which prevented him from swallowing altogether. The putrescence advanced, in a short time he became insensible, and about noon the following day he died in a state of total putrisolution.”—Was not the state of that man the consequence of drunken insensibility? Here is a case of a living body, in a state of decomposition; and in a few hours after life had left it, it far exceeded the state in which the body of Mr. Byrne had been found. [The learned gentleman having referred to the passage extracted from Mr. Dease’s work, and to the state in which the body in that case was found in a few hours after death, it being so putrid that he smelled it below stairs, proceeded]—I say, then, if Mr. Byrne had died on Friday evening, he might be in that state, and there is nothing to show that this unfortunate man did not die on Saturday morning, and was rotten in three hours afterwards. No person in that house smelled anything of that putrescent corpse until the evening of Saturday, and that that was the ordinary offensive smell that should come from such a den of filth, is not to be wondered at. This is not a place for a contest of medical gentlemen, each contending for their own opinions. Let them fight that battle, if they please, in the arena of their own anatomical schools, but do not sacrifice my client on such testimony. [Mr. Hatchell having again referred to the case before quoted at the early part of his speech, from Mr. Dease’s work, where it is related, that in

examining a body after death, to detect murder in a suspicious case, an assafoetida pill was found in place of arsenic, which had been supposed to have been given in consequence of the powerful smell, continued]—I suppose that, if Dr. Ellis was there, he would condemn every person in that house, and say that it was not assafoetida, but arsenic—"I charge every member of this house with having committed murder." If Dr. Ellis read that case previous to yesterday, he ought to blush for his conduct during the remainder of his life.

My Lords and Gentlemen, I fear I have fatigued you,—I have fatigued myself—and I shall now merely state that we have medical men of the first character in the profession to examine, and we will limit the inquiry to as few as we can.

Baron Pennefather—Mr. Hatchell, you have not fatigued the Court in the slightest degree.

Mr. Hatchell—I am obliged to your lordship.

Gentlemen of the jury—I have told you, we will limit the examination of the eminent professional men we shall call, and I will tell you, as briefly as I can, what they will prove. They will state, that they are unable to say of what this man died; but, Gentlemen, they will do this—they will negative every charge in this indictment, that he died by strangulation, or by suffocation, or by violence. They are able to swear positively, that he did not die of those, though they may not be able to trace the natural disease of which he died; but that is sufficient for the purpose, if you do not find he died a violent death, you cannot be satisfied of a verdict of conviction. I shall conclude this case on behalf of this unfortunate woman by saying,

May that Almighty God, to whom all hearts are open, all desires known, and to whom no secrets are hid, inspire you with a ray of his divine wisdom, to lighten you to a verdict that will bring consolation and comfort to the bosom of the afflicted family of this wretched and unhappy woman.

Dr. Robert Adams, examined by Mr. Fitzgibbon—I am a medical practitioner, a member of the College of Surgeons since 1818, occasionally occupied in hospital and private practice. I was here yesterday, attending this trial, when the medical gentlemen were examined, and attended to the evidence, and was present at the whole trial. From the facts detailed, the appearances and state of the body, I do not think I could swear, what was the cause of his death. It is impossible for me to say whether it arose from violent suppression of the breath.

To Baron Pennefather—Decomposition had so much set in, that it would be difficult to give an opinion whether death was caused by violence or not.

To Mr Fitzgibbon—The protrusion of the eye most probably arose from decomposition; I should think, the protrusion of the tongue, arose from the position of the body and the gravitation of the fluids, from the circumstance of the mouth having been open, more probably than any other cause. If the tongue, by the gravitation of the fluids, were carried out between the teeth while the body was warm, and remained in that position till the body was cold, I doubt very much, if the turning the body on the back would have the effect of making it retire, I think the swelling would increase after death, and prevent it. I think, it would remain in that position notwithstanding the alteration of the position of the body. Putrescence is so various in various persons, that I could not, from the state of putrescence described, tell you how long it was dead.

Mr. Fitzgibbon—Could you safely in your own opinion, or could any man pledge himself as a positive proposition, that that body was more than six hours dead?

Witness—If I were asked, I should say he was more than six hours dead, I would not certainly state that opinion as certain beyond a doubt, from my own experience.

The *post mortem* examination was Sunday at 4 o'clock. I would, by no means, from the state the body was then, say it was incredible that the body was not more than thirty hours dead. If drinking to excess had been carried on immediately before death, and if the body was laid in July on a wet bed, these circumstances would expedite putrefaction. I give this opinion from my own experience and reading, particularly when ardent spirits was taken in the month of July. If there had been vomiting, it would favour decomposition if the body lay in a damp place with the head lower than any other part of the body, it would cause putrefac-

tion to set in more rapidly on the depending part, it would account for its setting in about the neck and face. As for the chest I could not say, the same causes of gravitation might, but the chest is very slow to undergo putrescence.

Mr. Fitzgibbon—Assuming the face to lie lower than the other parts of the body, and consequently, a determination of the fluids to that place, would that account for the protrusion of the eye?

Witness—I think it might somewhat. I include gases. The weight of the gas would not be sufficient to protrude the eye, but I think its elasticity would, because the eye is contained in cells of a conical form, widening externally, and if gas or air was generated behind the eye, it could not get back, it must go forward. It would have the effect of pushing it out to a certain extent. I heard the evidence, that putrefaction, in the opinion of one medical gentleman, could not be the cause of the protrusion of the eye, I also heard the statement of Dr. Geoghegan, and the experiment he made concerning the protrusion of the eye from that cause, and I have to say, that I have already stated my belief, that the eye could be protruded from putrescence.

Cross-examined by Mr. Brewster—I should say about thirty hours would be a fair time from Saturday evening, the minimum, at a fair average, might be thirty-six hours, the maximum very various, in my opinion about four days.

Mr. Fitzgibbon—Do you entertain that opinion as an opinion free from doubt?

Mr. Brewster objected to the question.

Baron Pennefather—I think he has a right to the answer.

Witness—I do not think any medical opinion is free from doubt.—(Laughter.)

Surgeon John Kirby, examined by Mr. Walsh—I am a surgeon, and have been engaged as an anatomical lecturer for a great number of years. I am a member of the Royal College of Surgeons of Ireland; I have seen many who have died suddenly; I attended yesterday here, and heard the evidence given on this trial; I should state my conviction, that as far as I can gather from all the circumstances in evidence, there is nothing to induce me to think, that the deceased died from external violence; I am not able, from the evidence adduced here, to give a positive opinion as to what was the cause of his death, but there is an opinion I have formed in my mind, founded on experience, my own personal experience and knowledge of the profession, that he died of an epileptic seizure, from drink.

Baron Pennefather—You think, nothing has appeared in evidence inconsistent with that opinion?

Witness—As far as I can judge, the appearances can be explained with reference to that opinion. The appearances are all reconcilable with that hypothesis.

Cross-examined by Mr. Martley, Q. C.—How long was Mr. Byrne alive before Saturday night?

Witness—The fact is this—I have seen a great number of dead bodies; some run, in an inconceivable short time, into decomposition. Confining myself to the evidence, and what was stated in the *post mortem* examination, I have seen a body in that degree of decomposition in 24 hours. Judging from my own experience, I would say, that is the shortest time; judging from reading, no. I think, from the medical evidence, he was alive on Thursday. I think so from the strawberry seed and the projected fluid from the stomach. There was a state of digestion in the stomach; it was plain, from Dr. Geoghegan, who extracted matter of meat thrown out, and some fat, that digestion had gone on, and therefore he must have taken these matters previously in, and he must have been alive to effect digestion. I see no evidence to induce me to believe, that he died from external violence. Certainly, the state of decomposition the body was in, masks many of the appearances; they would be lost, in a great degree, in decomposition.

Mr. Martley—Do you consider, whether the appearances detailed are so inconsistent with the idea of external violence as altogether to exclude it?

Witness—I would say, they are inconsistent. The protruded eye and tongue, the state of the heart and brain, and the inflexion of the fingers, are the appearances, and without referring to external violence, I can explain all these.

Baron Pennefather—Let me put the question. You have said, that the appearances were reconcilable with death by epilepsy. Do you think, these appearances are reconcilable with death by violence?

Witness—Not all the appearances. The state of the heart was not reconcilable.

To Mr. Martley—The heart was empty; emptiness of the heart might be caused by the expulsion of the blood, by the generation of gas after death. It is right I should say, that the heart is found empty when there is no decomposition at all. I consider, the heart being devoid of blood, inconsistent with a violent death. If there had been blood in the heart, that inconsistency would vanish.

Mr. Martley—If, by the generation of gas, the blood was expelled from the heart, would it not prevent you from considering, that that was inconsistent with a violent death?

Witness—You are putting a case to me. You suppose, first, that a person dies with the heart full of blood, and then you suppose, that by gaseous pressure, the heart is emptied of blood; the question is, how does that weaken my opinion? I should hesitate to decide, till borne out by other evidence.

Mr. Martley—Is it not a fact, that the advanced state of decomposition in which this body was found, prevents the mere circumstance of the heart being void of blood, being inconsistent with a violent death?

Witness—The heart might be void of blood, although there was no putrescence and no violent death.

Mr. Martley—That is not the question. In that state of putrescence in which the body was found, might not the heart be empty, although there was a violent death?

Witness—There might.

Re-examined by Mr. Walsh—If the leading vessels of the heart were found empty of blood, would there not be strong evidence that the patient did not come to his death by violent means?

Witness—If the man died of hemorrhage, he might; but of course you are speaking of suffocation and pressure, the inference in that case would be, that there had been no violence used.

Baron Pennefather—Now, persons who die of suffocation or strangulation, if examined immediately, generally speaking, perhaps always, the heart and larger vessels have blood in them. But if the stomach has been suffered to lie without examination until it has become decomposed, in the manner described by the witnesses, could the effect of that decomposition be such as to take away the blood from the heart and larger vessels of the scalp, or circumjacent vessels for instance?

Witness—Yes. But it is right to state this. The immense quantity of blood that accumulates about the heart, under the circumstances put by your lordship, I do not think would be all gone; I think I could say, it would continue; I have seen a great number of persons who have died from suspension, in times when the law sent them to our public institutions; I was there at different times, and it was our habit to open and exhibit them, and of course, the state of these parts are rather familiar to me.

Baron Pennefather—You say, you are induced to think, he was alive on Thursday,—and that you are very much, if not altogether led to be of that opinion by the strawberry seed. Now is it possible or consistent with the account given of that seed, that it might have been taken into the stomach upon some day, anterior to Wednesday or Thursday.

Witness—Oh, certainly it might, but I thought I was to judge from all the circumstances; it might be taken in prior to that time; it is possible it might be taken in a week before.

Chief Justice—You have heard the evidence of Dr. Geoghegan, you heard his expression with respect to that strawberry seed which was this, "that the stomach was empty with the exception of what appeared to him to be a strawberry seed." Would any medical skill enable a person to pronounce, positively, without the extrinsic evidence given here, that what was in the stomach was a strawberry seed?

Witness—I think, no person could say so.

Chief Justice—Or even with that assistance, to raise a suspicion that it might be a strawberry seed?

Witness—No medical man could say, that what was found in the stomach was positively a strawberry seed.

Mr. Walsh—Would a person of botanical skill be able to say, that it was a strawberry seed.

Mr. Brewster objected to the question, and it was not pressed.

FOR THE MURDER OF HER HUSBAND.

Mr. Fitzgibbon said, it would be a fair question to ask Dr. Geoghegan, he knew about the strawberries being sent into the room, at the time he co it was a strawberry seed.

yes
conf
me
Dr. Geoghegan was according examined by Mr. Fitzgibbon.—I cannot say first, I came to the conclusion that it was a strawberry seed. I came to a conclusion, that it was a strawberry seed I found in the stomach at a time that not aware that strawberries were sent into the room.

Baron Pennefather—His evidence is the same as before,—“he found which he believed to be a strawberry seed.”

To Witness—Can you say with certainty and without doubt, that it was berry seed? *I can only state as before that it is.*

Witness—My conviction is, that it was a strawberry seed, but I will not say so.

Chas. O'Reilly, Esq., one of the lecturers in Peter-street School, was about examined, but as he was not present at the evidence of the preceding day, Mr. Brewster objected, and his evidence was ruled to be inadmissible.

John Shea, Esq., examined by Mr. Fitzgibbon—I am an apothecary; I knew the late Mr. Byrne very well for the last 13 years; I never saw him drunk; I have attended him occasionally; I attended him about 4½ or 5 years ago, for an attack from the effects of drinking; I attended him on two occasions; he was in a very nervous, agitated, and excited state from drinking; he told me, he had been living for some time “free,” and that, the violent symptoms he was labouring under, induced me to suppose.

Cross-examined by Mr. Brewster—He recovered under my skill; on the following evening, he was out; I gave him a dose of physic; he got quite well; I cannot say, he was a healthy man; I was not his only medical attendant; he was also attended by Sir Philip Crampton; I knew the deceased intimately; I was on some occasions at his house visiting; I was only once since he was married; It was since he was married I attended him; I do not know whether he lived on good terms with his wife; I never had any conversation with him on that subject; on these occasions, I had some apprehension that his symptoms might lead to apoplexy or epilepsy; I cannot say, he exhibited any symptom of it in his body.

Mr. Fitzgibbon—Was your apprehension founded on observation?

Witness—His face was flushed.

Mr. Brewster—Did you ever look at yourself in a glass after dinner? (*Great laughter*).

This closed the case for the prisoner.

Mr. Martley, Q. C., in reply on behalf of the Crown, said—Gentlemen of the jury, it is my duty, and it is like the duty you have to discharge, a painful one, to present to you a few observations as the evidence occurs; and, Gentlemen, I think, my observations may be confined within a very brief space. The facts are not numerous, notwithstanding the length of time consumed in another place in ascertaining them.

Gentlemen, I do agree with my learned, able, and judicious friend in many of the propositions he has laid down. I do fully concur in his position, that the more atrocious the charge is which is made against an individual, the more slow the jury ought to be in convicting an individual of that charge. So much is due to our common nature, that we shall not lightly believe that it is so altogether depraved as the commission of such a crime would infer.

I do also concur in my learned friends observation, that the only and principal question for you to try is, whether this hapless man came by his death by external violence,—it is almost the only question, because if you are satisfied, without such doubt as reasonable men may entertain, that his death was caused by external violence, I do apprehend, that the conclusion is irresistible, that that violence was inflicted by no one but the prisoner at the bar.

In the observations I feel it my duty to make, I shall abstain from pressing any circumstance one jot beyond what it will legitimately warrant, and if I should unwittingly and undesignedly do so, I have this great consolation, that I speak under the correction of great experience and eminent sagacity in the judges who preside here, and who will correct any error which I may fall into.

The evidence in this case is circumstantial, the evidence of the fact of a violent death is circumstantial, but I apprehend, that it is not because the evidence is circumstantial, that it is not cogent. This case has a feature in common with other cases of grievous offences. If the act was done, there was no eye saw that act,

but the eye that sees all things. That is a feature not peculiar to this case, and I have always felt and understood, that sometimes that evidence of circumstances, brought together without design, without the possibility of contrivance, or concurrence among individuals, is more cogent and more satisfactory than the positive swearing of individuals, because the individuals who swear to a fact, may easily have motives to swear untruly; but, generally speaking, the truth can be elicited from the natural concurrence of circumstances with a degree of certainty, I mean moral certainty, far more cogent and satisfactory, than if we rely even on the testimony of witnesses speaking to facts.

Gentlemen, the evidence with respect to the violent death of Mr. Byrne in this case is of two kinds, the evidence of the medical men on the appearances presented by the body, and the evidence of circumstances, which is a more valuable class of evidence, which has been adverted to by my learned friend. Though he suggested, that in point of law, he might be entitled on the discrepancy in the medical evidence to call for a verdict of acquittal, he did not deny the right of the Crown to call into aid the other circumstances of the case, which have a greater tendency to lead you to a satisfactory conclusion than the evidence of the medical witnesses. A great number of that profession have been examined, some of them, I believe, by universal repute, of the highest attainments, and most eminent in their profession.

The evidence of one medical gentleman on the part of the Crown has been commented on with a good deal of severity. I should observe, the medical men are divided into two classes; those who saw the body, and those who never saw it. Among the former a prominent person is Mr. Ellis, a gentleman, I have understood, of remarkable attainment and deep study. His evidence has been commented on with great severity, and, I am obliged to say, in my judgment, with altogether unpardonable severity. It has been suggested, nay asserted, that Mr. Ellis presents himself here as a partizan. Gentlemen, it is a shocking charge, in my judgment. Even if the person had no character to support as a medical man, as a gentleman, he must have as a Christian and a man; and it is very shocking to suggest, that he comes here on the part of the Crown to state, (believing it to be otherwise) that this person came by a violent death. But my astonishment was greatly increased, when I consider what the evidence of the gentleman really was. He details the appearances he saw. Now, there is not the slightest suggestion, that in detailing these appearances, he made the least mistake or misrepresentation. As to what the appearances were, the surgeons are all agreed. As to his opinion, what is it? Why, at length, without volunteering, in answer to a question put by the other side, his opinion was merely this, "My general impression is, that these are the signs of violent death; but that amounts, by no means, to a conviction." If you could believe it possible, that a person of his high position would come forward to assist in inflicting an unjust judgment on the prisoner at the bar; if you can listen to such a charge as that, there is no ground for it, because that is not the evidence on which we can rely for your verdict. But he did state his opinion with respect to the causes of certain effects he observed; on every one of these, he was borne out by a gentleman whose character it would be idle for me to say one word about. He detailed several circumstances; protrusion of the tongue, protrusion of the eye, contracting of the hand. Why, independently of contradicting opinions of medical men, (and there has never been a case in which the old adage, "doctors differ," has been more verified than in this case;) independently of these opinions, there is such a thing as common sense, to which each of you lay claim, and I think, in your own experience, if you heard of a person whose eye protruded, and whose tongue protruded, and whose face was black, and fingers flexed, you would say, they are like the appearances we hear of as being produced consistently with a violent death. Dr. Harrison has, in every respect, corroborated Mr. Ellis; therefore, unless Dr. Harrison be charged as entering into this conspiracy with Surgeon Ellis, there can be no charge of partisanship sustained against him.

Certainly, another gentleman was produced, of whom I have every disposition to believe that he is an able gentleman and knows his profession; but, hearing from such an eminent man as Dr. Ellis, that he thought it almost impossible that decomposition could produce the effect the eye presented, I thought it savoured more of rashness than ~~consideration~~ to say decidedly, that that was the case and no other.

I think, from these conclusions, you cannot fail to draw, from the entire of it,

Deliberation

two or three certain facts. First, that the appearances are consistent with a violent death. That was conceded by Mr. Kirby; he fixed on one circumstance as inconsistent in the case of a violent death, but which appeared afterwards to be no inconsistency,—that is one thing, then, you must conclude, that the appearances are consistent with the fact of a violent death.

Another conclusion is this, that whatever may have been the cause of that death, the circumstance of its advanced state of decomposition and putrefaction in which that body was found, has mainly tended to conceal the true cause, whatever that was, and that the result of earlier examination would have been to establish the fact, that there was no violent death, or that there was; though I think there can be no doubt that it is a circumstance very well deserving of consideration; therefore, I think, we may take the contradictory testimony of the medical gentlemen to be this, that though the appearances do not necessarily import, that he died a violent death, though they may be consistent with his having died a natural death, such as drunkenness, unaccompanied by violence, yet it is perfectly consistent with the facts of his having died a violent death—and then, I proceed to call your attention to what I consider the circumstances you have a right to take into account, in order to lead you to a right conclusion.

Gentlemen, Mr. Hatchell has said, that this must be a circumstance that directly bears on the issue. Gentlemen, I apprehend, there is no circumstance that more directly bears on the issue than such a circumstance as shall tend to show, whether a person did or did not manifest consciousness of guilt. The facts of the case are not very much disputed, it will be for you to say, whether you will draw from these facts the conduct of the prisoner under the circumstances of this most extraordinary case, evidence of the consciousness of guilt or not.

I do not agree with my learned friend, that your conclusion must be a conclusion of certainty, not conjecture, not surmise, not guess, but moral certainty. I may tell you, under the direction of the learned Judge, that it is not to be the certainty of a man who sees a thing with his eyes, it is to be a deduction from circumstances, founded on strong probability, on probability that no reasonable man can entertain a reasonable doubt as to the contrary, but that it is to be arrived at by deduction from circumstances.

What is undisputed in this case? My learned friend says, and says truly, that before you come to convict the prisoner of crime, you must show some motive. There, he says, there was no motive,—that they lived in the greatest possible affection, and that he would prove it. Now, Gentlemen, what is the evidence with respect to that? We have been obliged to resort to persons closely connected with the prisoner. We find, that they were both addicted to intemperance; that in their drinking fits they were scolding, that they did not keep the same room, that is not evidence of living on terms of domestic love. The husband gets the lock of his door constructed in a peculiar way to exclude every body, I do not say his wife alone, but every one, and she keeps her own room, and he never has access to it,—so they lived not on terms of conjugal happiness,—the wife scolding and the husband growling, loud voices of some persons in his room are heard, and they appear to be quarrelling,—that is some of the evidence, therefore, at the outset of this matter, we have anything but domestic happiness.

And now, not to take up your time, for the facts are but few, let us see, what is the evidence of the time of this man's death: it is of the utmost importance. The first medical witness, Dr. Ellis, and others, say, he must have been dead three or four days before Sunday. Others have thrown doubts on that. Take a medium time, we have contradictions of medical witnesses: we have cases drawn up out of books, which may or may not be books of authority; but are you to put into the hands of the medical gentlemen, entirely, your own common sense? There are, unfortunately, few of us who have not had some experience of death. Is it possible, I ask you, this state of decomposition could take place in a short period? Surgeon Geoghegan was examined; he made an experiment since the inquest, and he says, that decomposition was sufficient to produce protrusion of the eye. Dr. Geoghegan made an experiment on a child still born,—he tells you, that all children will decompose more quickly than grown persons, and still-born children still more so; and he makes his experiment on a subject most favorable, and this appearance does not exist for thirteen days; in six days, they

begin to show an appearance of protrusion, but not till the thirteenth day did they protrude.

But here it is said, we are to arrive at a moral certainty in this case. I do say, there was a most studious, deliberate concealment of his death on the part of his lady, and I beg of you to consider it. Let me not press it too far, but see the conduct of the wife towards her dying husband, not calling in any body to assist him in his death-struggle, but excluding every one, till a state of things had occurred, as to make it impossible to say, whether he died from violence or natural causes.

Let us come to her own statement. My learned friend puts this on two grounds. First, that it took place on Saturday. Secondly, if it took place before, she was unconscious of it. The witnesses we have produced, are not witnesses that can be considered unfavorable to her, they are her own family: her son tells you that he was called up on Saturday, and she was sober then. Her servant Talt, who must have known her habits, tells you, and tells you with reason, that on Friday she was sober, that she appeared to have been drinking, that she was like a person recovered from a drunken fit, but she was sober. On Friday and Saturday, there was no drink sent in except some porter on Saturday morning, therefore, I think, that on Friday she was perfectly sober. See what she says herself. The Coroner examined her on Saturday night. Her son declares she was sober then: she said he was dead on Friday, but she adds, too, that she sent for a doctor on Friday. That was not so. My learned friend infers from that, that she meant to represent that he died at 11 o'clock on Saturday. See how that is consistent. Do you recollect the evidence of the policeman? What account did she voluntarily give, her husband lying dead, the *post mortem* examination going on? It is hardly suggested, that at that moment she did indulge in these shocking habits, there is not the slightest reason to suppose that on Sunday she was not sober and conscious of what she was saying. She then stated to the policeman, that she heard a gurgling in his throat on Saturday, and called her son. Is it possible that this is true? At the moment she called her son, he was rotten! Does she say herself, she did not know when he died? No; but she tells you, she was conscious of the moment of his death, and sent for assistance. What is the evidence of the apothecary? He says, "he is dead," she says, "Oh no," and she asks the surgeon to do what he can for him! Now, is this, or is it not evidence of a predetermined attempt to conceal death? What occurs on Saturday morning? Take all the suggestions that you can, I believe even on the evidence of all the medical men, and it is impossible to suppose that he was alive on Saturday morning. All the evidence is against that. We cannot bring you positive evidence of the time death occurred. No human eye saw that, but the prisoner at the bar, but that is for you to say. Is it possible to entertain a doubt but that he was dead before Saturday morning? All the week, every body was excluded from his room. On Wednesday, her son got her to leave the room. He thinks she drew the door after her only, that it closed of itself, it had a spring bolt which could not be opened from the outside. Talt tells you, that he passed it by twice, and that it was shut as close as it could be. Now, what occurs on Saturday? She sends down to have two cups of tea sent up. That is a circumstance I do not desire to press any farther. It is for you to say, whether her husband was living, and that she wanted the cup of tea for him. If she knew he was dead then, and that he was, there can be no reasonable question, can you reconcile the studious attempt to conceal that fact, not to tell it (though that must be a circumstance so extraordinary as to give rise to great suspicion), can you reconcile that with the consciousness of innocence of the prisoner at the bar?

My learned friend said, she must have been in a constant state of stupefaction. Does the evidence agree with that? On Wednesday she was under the influence of drink. On Friday you have the evidence of the servant,—it is for you to say, what the effect of it is. He goes up to her about domestic affairs, a woman calls with fish, she regulates the price of it, she speaks to him about it, and goes into the room again. Is that consistent with stupefaction? If her husband were dead or dying, is it possible she could not know it? That is for you to answer, not for me.

Recollect her declaration farther. It is said, when she said Friday to the Coroner,

she meant Saturday. She said, she slept in his bed on Friday and Thursday nights, she could not mean Saturday by that. What I would suggest to you is this, that she did mean to represent that he was dead on the first occasion, and that the fact was so. That is for your consideration, I do not wish to press it farther.

Gentlemen, so much I have thought it my duty to say to you. I hope I have been able not to deviate from my determination of pressing nothing but what is necessary. If your conclusion is, that my views are groundless, and that there is no sufficient evidence that this man came by his death by violence, I shall be rejoiced. If he came by a violent death, and if such should be your conclusion, it is not suggested that that violence was inflicted by the hand of any human being except his wife.

Baron Pennefather then proceeded to address the jury as follows :—

Gentlemen of the jury, although this case has been most ably discussed by the learned gentlemen who have addressed you, as well on the part of the Crown as on the prisoner's ; and although I am sensible that you have given your undivided attention in its progress, it is, notwithstanding, my duty to say some words to you upon this important case.

Gentlemen, it is important obviously, so far as it concerns the prisoner, whose all may be said to be at stake, but it is important also, as concerning the due administration of justice in your land, and that crime imputed, of this magnitude, should not pass unpunished, if it have been really committed, and that security may be afforded to the good and peaceable and well conducted, as well as due care and consideration for the interest of the prisoner now on trial before you.

Gentlemen, much has been said of this case out of the precincts of this Court. An investigation, I am told, for I have seen nothing of it, has taken place, or did take place, for a lengthened period, almost unparalleled in duration, and it cannot but have excited much feeling and much interest in the minds of the men who have heard of what was taking place, and who have heard of the sudden death of this person. But, gentlemen, I trust that if any of you have heard of these proceedings, you will not suffer your minds to be affected by any thing you have heard out of this Court. You know your duty, you know it well, that it is to decide on the evidence given on oath before you, regardless of its consequences, throwing aside every thing that you may have elsewhere heard, and being determined to do justice between the public and the accused.

Gentlemen, it is a frightful charge ; it is a charge of murder, alleged to have been committed by the party upon her husband ; and it has been truly said, that the greater the crime imputed, the more careful ought the jury to be before they suffer the accusation to be fastened on the accused : credit must be given to human nature. But on the other hand, you are to examine, whether the charge has been sustained by evidence which removes from your minds any reasonable doubt that the fact has been committed, and that it has been committed by the accused.

It is not to be established by guessing, it is not to be established even by strong probability ; it must be established by evidence, whether that evidence be direct or circumstantial, which leaves no doubt in the minds of reasonable, thinking, conscientious men. If, after reviewing the evidence, after weighing the observations that have been already made, and those which it will be my duty to submit to you, and which may occur to yourselves, there should remain a doubt in your minds as to the guilt of the accused, you ought to acquit her ; but if you have no such doubt, your duty tells you, and your oath requires it, that you should come to a different conclusion.

Gentlemen, let us see how the facts of this case are, first, those concerning which there is not any dispute ; and next, those on which there may be contrariety, either as to fact or opinion.

That this unfortunate gentleman was addicted to liquor at times appears certain, but I should take it on the evidence, that the fits of drunkenness were the exception, and that, generally speaking, his habits were temperate ; at least, that is the way in which the evidence strikes me : it is for you, however, to consider it, and to see whether the same view strikes you.

He was in these fits of drunkenness, in a manner deprived of the character of a human being, depriving himself of his reason, and reducing himself to the state of a brute. I make the observation, not as reflecting unnecessarily upon the cha-

racter of the deceased, but as an ingredient which cannot be thrown out of your consideration.

His wife, the prisoner at the bar, appears to have been, at least at times, in those scandalous and shameful excesses, she seems to have partaken with her husband in that scandalous and debasing habit which reduces man to the class of animals, placed by the Almighty in a station below him,—and, Gentlemen, in the consideration of her case, that habit must be borne in mind,—not as a circumstance that we are now trying her for, but as a circumstance which you will find of the utmost importance in the consideration of the evidence that has been given in the case.

She appears to have married this, her second husband, nine years ago, being then the mother of three children, who, unfortunately, I will say, for her own feelings, have been necessarily produced before you, as witnesses in the case. But, circumstanced as the Crown was, circumstantial as this unhappy transaction was, you will probably think, that the production of these young persons was an indispensable duty on the part of those who have conducted this prosecution.

It appears, that the deceased, in the latter end of June, went to the races of Bellewstown. What time he remained there does not appear. He returned late in the evening, or on the night of the 30th June, in the present year, and, according to the evidence, although the counsel for the prisoner stated the fact to be otherwise, it would appear to me that he was not in a state of intoxication. The servant man says, that he was not drunk; however, it is possible that he may have taken liquor. However that may be, his wife met him, and his first act, almost, after his coming home, was to send out for a quantity of that deleterious liquor. It was brought home to the man, and the effects, it would appear, were such, that on the following Friday (the next day) neither of them appeared until a latish hour in the day, when, according to the evidence of the servant, the deceased came down about five o'clock, a little before dinner. The wife was also by at that time, but neither of them dined with the family. What became of them does not appear by direct evidence, but you will judge, whether they did not both retire to that abominable and filthy den from which they had emerged.

Gentlemen—It has been said that they lived on bad terms. You will ask yourselves whether that appears to be the fair result of the evidence. The step-children of the deceased, if you may judge from their manner, appear to have been fond of him; and they stated, that the prisoner and he lived together on friendly terms, except upon the occasions of these baneful fits of intoxication.

Gentlemen, it is material always, when crime is imputed, to find out, if one can, the motive which may have led to the commission of that crime; and you will ask yourselves, whether, in the present case, you are satisfied that any motive has been established by evidence sufficient (no motive could be sufficient), but likely to lead to the commission of such a crime as this.

On that Friday they retired, it may be supposed, to the chamber of the deceased, to that chamber which he never afterwards left alive, so far as it appears in evidence. They were not seen on Saturday—I am speaking of Saturday 2d July; and he was last seen alive, with the exception of what the servant man says about the arm, on Sunday 3d July, by one of her sons. On the evening of that day, although he was not seen, it appears by the evidence, if we believe it, if there is no mistake in it, that he was alive in the evening, that his voice was distinctly heard, and that the voice of the prisoner was also heard, and, as you might expect from brutes, inclosed together in a state of mutual hostility, I do not mean of blows, but of anger. That was on Sunday the 3d, and that fact appears to be established—the fact of the angry disposition, or the angry noise between this ill-fated couple, not only by the evidence of those in the house, but by the evidence of Mr. Barry, who heard the noise from the adjacent house.

On Monday, they are not seen. On Tuesday the servant is called up (I am now alluding to the testimony of the servant Talt,) who says he was called up by the deceased; that the deceased spoke to him, desired him to get a pint of whiskey, gave him half-a-crown, and that he handed it to him, his arm being bare to the elbow; that he knew the arm and voice of the deceased, that he brought back the whiskey to him, that the deceased chided him for the delay, that he received out of half-a-crown change of threepence, and that was given to the same hand that had handed him the money.

Gentlemen, I draw your attention particularly to this, in order that you may satisfy yourselves, if you can, that this unfortunate man was alive on that Tuesday, that the servant had full opportunity of knowing his arm, and of knowing his voice, recollecting that he said, the voice was not in its natural tone. He says, that though it was his master's voice, it was not his natural tone; but he says also, that it was a man's hand, and if it were, it must have been (one would suppose at least) his master's hand; for there is no evidence of any other person of the male sex being in that room. It will, however, be important, in the view of the case, which both my Lord Chief-Justice and myself think it right to present you before this case closes, that you should carry that circumstance in your mind, and be satisfied, if you can, that the person was alive upon that day.

Gentlemen, on Wednesday, things were brought to his room, I mean more liquor. He was not seen on that day, he was not heard on that day, and without going through the different days, I may safely, I think, state, that no day of his existence after Tuesday has been established by any direct evidence. I say direct evidence (for I do not forget what was said by Mr. Kirby). Gentlemen, upon that day, among other things, strawberries were sent up, and a chicken was brought up either on that day or a subsequent day, there is a little doubt about the hour, and also some fried bacon, or something of that kind, was also brought into the room.

Gentlemen, on Wednesday, a material circumstance occurred. The prisoner left the room something about 10 o'clock, being called out by one of her sons, who wanted to get some money from her. She went up stairs with this young gentleman, she gave him the money she had in the desk in her own bed-chamber, which was over that of her husband, and he says, that perceiving her then to be in liquor, he entreated her to lie down on her own bed, which, he says, she did, and he says, he supposes she lay there till dinner, and he says, that she left the door of the room ajar or open, or at least not shut with a spring lock; he did not speak of a spring lock, and you will judge, whether I am under a mistake when I say that the door was left not closed. That was the testimony of the son. The servant Talt had occasion to see her on the day she was above stairs; he says, he does not know whether it was Wednesday or Thursday, but there is no evidence that she was above stairs on any other day but the one, until the Saturday, and he says, that upon that day, she was above stairs, he brought up a boiled chicken into the room, I mean the room where her husband was lying, between 1 and 2 o'clock, that she received it in through the door, opening the door wide enough to admit the tray on which the chicken was, so that if he be correct in that, she could not have remained up stairs till 5 o'clock, as her son supposed; he did not say she remained above, but he said he supposed she did, and it is for you to judge whether this witness is accurate or not; he says, that the door was shut as closely when she was out of the room, as it had been at any time she and her husband had remained together within.

Gentlemen, it strikes me, that it is a circumstance which unquestionably cannot be discarded from your minds as a trivial one, whether the door was left open or not on this occasion. If it was left open, it seems to negative any idea that any violence had been previously committed on the deceased, or that he was then not alive. But if the door were shut immediately by her when she left the room, and that she carried the key by which alone that door could be opened, no such inference, you will perceive, can be made in her favour.

Gentlemen, that was on Wednesday, according to the evidence of the son. On that day, strawberries were brought up, I am not speaking of liquor, which was sent up from time to time to excess. On Thursday again, Talt says he brought up strawberries, which were received by the prisoner on each of these occasions. On Friday he was at the door again, and he says, that he came to tell her of some fish that was brought to the house, he told her that the woman asked 2s. 6d., but she gave no more than 1s. He says she was sober on this occasion, but tossed, according to his expression, and the fish were ultimately bought for 1s.

On Saturday, at ten o'clock, he visits the room again, and by the desire of the prisoner, he brings her two cups of tea, and she, in the course of that morning, orders dinner for the subsequent day, Sunday. On Friday, she saw the maid servant, and she said to her, she thought she had given her weekly money on the Monday before. The maid servant said she did not, but it was afterwards sent to her by Talt. I mention these particulars with a view to draw your mind to the

probable state in which this woman was—I mean as to sobriety or drunkenness. On Saturday, again, between six and eight o'clock in the evening, she calls one of her sons to turn the deceased from his face. The son came up—saw his ear black—but he says, he went down immediately for his brother; they returned together, and they exclaimed, that he was dead. One of them said, that she cried out, "Oh no," and the other, that she desired Dr. Harvey to be sent for, or a physician to be sent for. On that occasion unquestionably he was dead, and the appearances he presented are described by Dr. Harvey who came shortly after.

I said, that she had left the door closed on Wednesday, that she had kept with her the key, according to Talt; and it appears by the evidence of Talt that he saw her open the door from outside, on Saturday, at one o'clock, with the key which had been in the custody of her husband, and which she must have had in her actual possession.

Gentlemen, Dr. Harvey tells you the appearances of the deceased, he tells you that his face and neck were black; that blood, or some serous matter, appeared to be exuding from his mouth and nose, and that he appeared in a state of rapid decomposition—so much so, that he thought he had been dead four or five days. That was the appearance presented by the deceased, in Mr. Harvey's judgment.

Upon the evening of that day, the Coroner attends, and he questions, as it was his duty to do, the prisoner, as to what had happened, cautioning her not to say anything which might criminate herself. Gentlemen, it is a very proper caution to be given—it is quite right that the accused should have, from the beginning, a full opportunity of explaining all the circumstances that may relate to the case,—it is the privilege of the accused, that nothing is to be extorted—nothing to be got out by undue means, by threats, or by promises; and it is, therefore, always a proper precaution for persons to use, to tell the accused that they ought not to say anything that may criminate themselves. She then says, that on Thursday and Friday last she slept in his bed, and that he died on Friday, and the Coroner took down that. Much comment is made on that. It is suggested, that Friday was a mistake, either of the Coroner in taking it down, or of the prisoner, and you will see, whether that suggestion be or be not borne out; the words are, "Mr. Byrne died at two o'clock, 8th July; she says, she slept in his bed on Thursday and Friday."

Now, it appears, that in point of fact, Dr. Harvey was sent for on the night on which the death was made public, and that was, unquestionably, on Saturday,—and, therefore, you will judge whether the fair construction of this document, being taken from a person under agitation, as unquestionably she was, on the evidence of the Coroner, whether it is not to be taken, that the assertion of the day of the death may not be mistaken, using Friday for Saturday, the more especially when we find that her declaration on the same subject on Sunday was, that he died on Saturday.

But, there are other parts of this statement not immaterial for your consideration. When she says that her husband sent the boy for the quart of whiskey on Thursday, and that it was handed to him, the evidence of the boy Talt, (I suppose that is the boy she mentions) who was very distinct as to the day Tuesday,—he says, he saw an arm, which was Mr. Byrne's; that he had no communication with him afterwards. If there be a mistake in this, it is for you to consider. On the other hand, you will judge if Talt be correct in stating that on Tuesday he brought him the liquor, if there was any intentional change of the day by the prisoner, and for any and what purpose?

Gentlemen, examination of the body was made on Sunday. It was at that time in a great state of decomposition. It does not very distinctly appear, what progress decomposition had made from the Saturday. When Mr. Harvey saw it on Saturday evening, it was then in a state, he says, that induced him to think that it had been dead four or five days. On Sunday, there is a general account of decomposition, with the addition, that some living animals appeared about the nostrils.

Gentlemen, the body, according to concurrent testimony of all the surgeons, exhibited marks which are not common, at least in ordinary deaths. The face was black, and the neck was black, and decomposition had proceeded to a great extent, especially about these parts, so as to obliterate any marks of violence, if any had been used. One of the eyes very much protruded, the tongue was extended between the teeth, according to the testimony,—on this, there is a little variance as to the extent of the protrusion,—one witness says, half an inch—the other, not quite so

much. The lips were swollen, and the fingers were bent. Gentlemen, the opinions, then, of the medical gentlemen, have been taken, and given to you, upon the subject of these appearances. Gentlemen, it has been truly said by one of them, or by more than one, and very eminent men have been examined, that in cases of this kind we cannot arrive at certainty—that, from the nature of the case, certainty cannot be arrived at, but that opinions may be formed, which ought to be attended to, with more or less respect, according as you may consider the opportunities presented affording the means of forming just opinions, and as the judgment, and capacity, and knowledge of a medical person would enable him to form an opinion on the facts presented.

Much has been said as to one of the medical gentlemen who has been examined, Mr. Ellis. Gentlemen, it is for you to judge whether that gentleman gave his evidence, in any manner, unbecoming a gentleman, or in any way that derogates from the credit you would otherwise have given to his opinion. He has been assailed, not only as for errors in judgment, which may be imputed to us all, (for no person can say, his judgment may not err) but he has been assailed for improper motives. I feel myself bound to say, that whatever ground there may be for imputing to him a mistaken opinion, I could not see any ground for impeaching his intention. It is, in my mind, due to every man, and more especially to a professional man, that if there be no ground, really, for imputation, that imputation cast upon him ought not to be suffered to rest or to remain. You will, notwithstanding, examine what this gentleman has said, and far be it from me to exclude from your consideration the idea of his having intentionally swerved from what was correct of having been biased by preconceived opinions, which was only the extent to which his impeachment extended.

Mr. Hatchell—My lord, I meant not to impeach his testimony farther than that he was swayed by professional bias.

Baron Pennefather—I take it, Mr. Hatchell, as such. He is an experienced gentleman. I have not the honour of knowing him; I did not suppose, that any thing was intended beyond that which is a bias on the human mind, which it is sometimes difficult to guard against, having given an opinion, strongly impressed with that opinion, and therefore unable to a certain degree, to correct that opinion, if it had been erroneous. No doubt the human mind is subject to error, but this gentleman says, that taking appearances together, as exhibited by this deceased gentleman, his strong opinion is, that he died of some convulsive struggle, (there was one other symptom, the discharge of fœces)—he says he died in some convulsive struggle, but what that was produced by, Mr. Ellis was not equally clear on. That it might be produced by external violence, he asserted, that it might have been the effect of epilepsy, he admitted, but his opinion on the whole was, that it was the effect of external violence. That appears to me to be the full result of Mr. Ellis's opinion, and once for all, I must say, that these opinions, although in my mind they are to be attended to, and although you will think they ought to be attended to, because people of science have given them, yet as they may be mistaken, you are not bound imperatively by these opinions on one side or the other, but you will ask yourselves, how far they satisfy you, and on which side these opinions preponderate. You are not to find your verdict on preponderance of opinion; you must be satisfied of facts before you find your verdict. If the opinions went the length of saying, that death necessarily was produced by violence on one side, or that they could not be appearances produced by violence, they would be a different class of opinions than those which we have now to consider.

Mr. Harvey was examined, a gentleman whose opinion, at least on the score of intention, is not impugned, and you will judge, whether there be any reason to impugn it on any other ground than that of the common failure of human intellect. He attended the trial, he carefully attended to the different symptoms that were examined, and the nature of his opinion is, that the death was occasioned by violence.

There is one circumstance, and one appearance, which, as I understand the evidence of all the medical gentlemen, does not consist in general with death produced either by strangulation or suffocation, namely the absence of blood from the heart, and the large arteries about the heart, and its fluid state about the head. That is accounted for, you will judge whether satisfactorily or not, by the state of decomposition in which the body was. A very minute examination was made as to the state of the blood in the heart and large arteries immediately connected

with it; and it is stated, I think, admitted, by all the medical persons, that decomposition, to a certain extent, and under certain circumstances, may have the effect of removing the blood from the heart and larger arteries, even in cases of death by strangulation or suffocation, and that, therefore, you will consider—I am alluding now to the evidence of Mr. Kirby—whether the appearances were such as to negative altogether the fact, that death was occasioned by external violence.

Other witnesses were examined on behalf of the prosecution, and an experiment appears to have been made by one of the gentlemen, Dr. Geoghegan, on an infant child, still-born, on the effect of decomposition in protruding the eye. You will recollect, there was a great deal of difference of opinion on that subject. Some of the medical gentlemen, Mr. Ellis and Mr. Harrison, were of opinion, that that protrusion of the eye could not be occasioned by the gaseous substance that exudes on decomposition, that it must have been the effect of violence, or of a fit; and on the other hand, other medical gentlemen have deposed, that it could be effected by decomposition, more especially, as only one eye actually protruded, and not the other. But Mr. Geoghegan made an experiment (how far it may satisfy is another question) on a child still-born, in which decomposition, as I understood him, did not commence for six or eight days, and did not produce the effect of protruding the eye until the thirteenth day. Whether that shows that decomposition can have the effect of protruding the eye, whether that be any evidence of the length of time decomposition must be going on in order to produce that effect, you will consider, on Mr. Geoghegan's evidence.

Chief-Justice Doherty here suggested, that the evidence was, that an effect was produced on the eye on the sixth day, and that protrusion was complete on the eighth.

Baron Pennefather—The Chief-Justice thinks it was on the eighth day. We will take it as such. I know he mentioned the thirteenth day, perhaps he meant the right eye,—however, I do not think much turns on the difference of the days.

Other gentlemen were examined, and witnesses were examined on the part of the prisoner, and among others, Mr. Adams and Mr. Kirby, most eminent men. Mr. Adams would not undertake to say, in the state of decomposition in which the body was, that he could form any opinion as to the cause of his death, whether it was produced by external violence, or by a malady not occasioned by external violence. Mr. Kirby said, that the affection of the eye might be produced, in his opinion, by decomposition. He said that. Upon the whole, you will recollect, that Mr. Kirby did not see the body, but attended to the evidence given yesterday, neither had Mr. Adams seen it. He says, he thinks, that decomposition might have occasioned the protrusion of the eye, and that, according to all the circumstances, his opinion is, that the death was occasioned by an epileptic fit, but he will not say that, with any degree of certainty; and he says, that the appearances were quite consistent with such a kind of death. But though he said at first, that he thought that death was not occasioned by strangulation or suffocation, because there was no blood in the heart, nor in the large arteries about the heart, he says he had been in the habit in the early days of his practice, of seeing many subjects who had come to their death by strangulation, and that therefore, he is the better enabled to give that opinion, that in general, persons strangled have blood about the heart, but then, he appeared to me to qualify his answer very much, if not altogether, for he said, that the effect of decomposition, proceeding to the extent it had done in the subject we are now considering, would have the effect of removing the blood of the heart to, among other places, the scalp and lower extremities. That appears to be the effect of Mr. Kirby's evidence. He was then questioned as to the periods of decomposition, what was the probable time of the death of this person, and he says, that decomposition might have taken place in twenty-four hours, or in less time, but he says, that taking into consideration the account given of this person, and I think a little attending to the evidence of the strawberry seed, that he was alive on Thursday, because Mr. Kirby said, that if there were a strawberry found in his stomach, he must have been alive when he took it, and if it were brought to him on Thursday, he must have been alive on that day.

But, in the first place, we have no certainty that this was a strawberry seed. Mr. Geoghegan said, that he only believed it to be a strawberry seed. That is not the kind of evidence of fact submitted to observation which the law requires, it is not proved in the way it was possible to be proved, that that was a fact that could

be submitted to a test to know, whether it was a strawberry seed or not, I believe chemists might do so, and there is no doubt about it, that his saying on his belief does not establish the fact.

There is this to be considered also, that Dr. Kirby said, the seed might remain in his stomach, though taken into it a week before Thursday, therefore, you will judge, whether that circumstance affords any reasonable ground of concluding with certainty, that he was alive either on Thursday or Wednesday. On the latter day, you will recollect, that strawberries were brought into his room, as well as on Thursday, but you will consider, taking the whole of this evidence together, this particular of the strawberry seed, showing you, that this person was alive on either one or the other of these days, in the absence of any direct proof, that it was the seed of a strawberry, and the presence of the evidence of Mr. Kirby, that if it was a strawberry seed, it might have remained in his stomach for a week. Therefore, gentlemen, you will consider, on this part of the case, whether there be evidence on one side or the other, which will satisfy you beyond any reasonable doubt, of the time of the death.

The prisoner said, he died on the Saturday, that he was dead on Saturday there can be no doubt. Mr. Barry says he perceived a smell in his drawing-room on Friday, but he cannot say, whether it was a similar smell produced by the cats dirtying in the room, and he could not say, that when he went into the house on Saturday, that it was the same kind of smell, and no body in the house, whether from want of opportunity or otherwise, it does not appear, perceived the smell of the dead body (I think that is what must be spoken of) at about 10 o'clock at night, and when Talt was at the door, it being opened by his mistress, the prisoner, on that occasion, he did perceive the smell, but, he says, the prisoner said, in addition to what I have already observed upon, to the inspector of police, Mr. Finnimore, that he died on Saturday, and that she heard a guggling in his throat, and sent for a doctor. Now, taking that together, that she sent for her sons, that she said she heard a guggling noise in his throat, you will consider, whether that referred to the time when her sons came into the room and lifted him from his face, and whether, if it did refer to that period, it could have been true, and whether, taking into account the evidence of Talt, if he be not mistaken in what he says, of a smell, that death must have taken place prior to the evening of Saturday.

Gentlemen, the state of decomposition in which this body was found on Saturday, or at all events on Sunday, has had the effect of rendering it, I may say, impossible for medical persons to state with certainty the cause of his death. All we know, with certainty is, that on the evening of Saturday he was dead, and that he must have been dead some considerable time, whether hours or days, will be a matter for your serious consideration.

Gentlemen, in a case like the present, it is impossible to discard from your mind the conduct of the accused. You are not necessarily to infer guilt from that conduct, but in the absence of positive evidence, it is one of the media of proof to which the Court and jury must necessarily resort, and if the appearances of the deceased prevent, and have prevented the full elucidation of the truth, if that has been contributed to, or occasioned by the act of the accused, then, the more importance must be attached to the act. In civil cases, actual presumption arises against the person who secretes evidence. I would not by any means encourage the opinion, that a similar rule is to be followed in criminal cases, but, as I have already said, the act and conduct of the party accused must, in the absence of clear and more direct proof, be taken into consideration. If a person accused of theft flies, the flight of the party has at all times been considered evidence of guilt, weaker or stronger, according to the circumstances.

Now, Gentlemen, from these observations, you will observe, if you have not already done so, the importance of ascertaining, if you can, the time of the death of this person. If it took place many days antecedent to the Saturday, or any length of time antecedent to the Saturday, and if the prisoner was in possession of her senses and mind, in such a way as to be aware of the fact, you will consider, whether it was the part of an innocent person, not to have immediately disclosed the fatal event that had taken place, whether the feelings of a wife would not necessarily prompt her, if she were in the possession of her reason and of her senses, to make the disclosure of the death of her husband, with whom she had been shut up for some days.

That he was alive on Sunday 3rd July, appears, I think, put beyond any doubt; that he was alive on any subsequent day, you will ask yourselves, whether it has been established to your full conviction and satisfaction, whether you think that the evidence of Talt is sufficient to satisfy you of that fact. He said, his voice was in a disguised tone, that the arm was stretched out from the room door; he swears unquestionably that it was the arm of a man, he did swear that it was the arm of the deceased, but how he could distinguish the arm from the arm of any other man, is a matter that could not be distinguished, but that he could distinguish, if there were means of observation, the arm of a man from that of a woman, is probable, there can be little doubt of it. But you will consider, whether he had the full means of seeing the arm that was extended to him, whether the light was sufficient. The bed was between him and the window, it was close to the door, the beds foot faced the fire-place, the window was at the far side of the bed. You will consider whether Talt tells you the fact of which you are perfectly satisfied, that he was alive on Tuesday, whether he can be certain of the voice, which, he says was not the natural toned voice of the deceased, and whether there was light sufficient to enable him to judge of the arm. If that were not so, and if he does not speak with certainty, and with a means of certainty sufficient to satisfy you, then there is no other evidence that this gentleman was alive after Sunday night.

Gentlemen, as far as I view the evidence, you will consider, whether the appearances were inconsistent with the death so far back as Sunday; whether, although the appearances indicated decomposition of four or five days, that it might not be two or three days longer. As far as I understand the evidence of some of the medical gentlemen, they say, it might have been of that duration; but, you will ask yourselves, whether there be any thing to satisfy you, that Talt is certain that he was alive on Tuesday, and whether the evidence of the medical men shows that he was so alive.

Gentlemen, if the death took place anterior to the Tuesday, or even if it took place subsequent to it, you will consider, whether the prisoner was in such a state as to have been sensible of the death. She was represented to have been, on Sunday at least, in nearly a brutal state of intoxication, she fell at the door, and obstructed the entrance of her son. Whether she was recovered from that in any way, at any subsequent period, and prior to Friday, does not, I believe, distinctly appear on the evidence. If she had brutalised herself so long in this abode of filth and of stench, in this abode of abomination, if she had stupified herself in such a way as to be insensible to the events passing before her eyes, that state of stupefaction would relieve her from the imputation of not discovering that death, if it really did exist. That she was in that state for a period, seems probable, whether she was in that state on Wednesday morning when she gave the money to her son, took it out of her desk, and when Talt saw her, you will judge; whether on Friday when she arranged about the fish, you will judge; or whether she was in that state on Saturday morning when she ordered two cups of tea, if that tea was meant for a second person, you will judge, whether she would have found out that that second person was in a state of stupefaction, or in the sleep of death?

Gentlemen, the habits of these unfortunate persons (I must call them both so), make this case of great peculiarity, while, on the one hand, it makes us shudder at the circumstance of human nature being reduced to such a state, it, on the other hand, perhaps, prevents us from visiting on the accused all the consequences of her being in her reason. But still, Gentlemen, you must see, to what extent it was taken, to what extent it existed, and to what extent it ought to afford protection.

Gentlemen, this brings me, perhaps, to the proper time of mentioning what has not been suggested by counsel on either side, what, perhaps they have been right in not submitting or mentioning to you, but what the judges who have heard the case think it to be their duty, as arising out of the facts of this extraordinary transaction, to suggest and submit to you. You will ask yourselves, if there be any evidence to satisfy you of a preconceived design on the part of this woman to put her husband to death? If there be no direct evidence, are you to infer it? Such an inference is not to be made, unless warranted by the circumstances of the case. In the absence of other evidence, and in ordinary cases, if death be traced to the accused, and be fully established, it lies on the accused to bring forward circumstances of mitigation. The law implies malice, and says, that death

unexplained, must be considered as murder, but in the absence of any direct evidence of malice, where the evidence establishes habits of beastly drunkenness, tending to the deprivation of reason, where the evidence establishes loud words, at least, if not of blows given, is it going a great way to say, and to suggest for this prisoner, that in these words of anger, blows might have ensued, and violence have been offered which led to the death of this unfortunate man, and if such had been the case, and if death did follow on a sudden conflict between them, you will ask yourselves, whether you ought to exclude that view of the case, because concealment had taken place. If this unfortunate man died by violence, and if the prisoner in heat and passion, and by blows, inflicted violence on him which caused death, on coming to a share of reason she might have been sensible to a certain degree, of what had been done, and the thought might have crossed her mind, that it might be possible to conceal it, and if it were possible to conceal the act of murder, it was equally possible to conceal the act of manslaughter, the same motive might equally lead to the concealment of one as of the other.

Gentlemen, it is not for the Court to say, that that was the real state of things, it is not for the Court to say, that death did follow from violence, or that there was any concealment on the part of the prisoner. You are the judges of these facts,—you cannot, in any view of the case, find the prisoner guilty of any crime, either murder or manslaughter, unless you are satisfied, beyond any reasonable doubt, that the death was occasioned by violence, and that hers was the hand that inflicted that violence. All the observations I have made equally apply to the greater or less degree of homicide, to find her guilty of either, that cardinal fact must be established in your mind beyond a doubt, beyond such a doubt as would enter into the mind, and after full consideration, remain in the minds of rational, sensible, intelligent, and conscientious men.

In determining that fact, you are not only to attend to the circumstances of the case, but you are to attend to the evidence of the medical men, to see how far that evidence be consistent with a death by violence, how far it makes such a death probable, taking into account the situation of the subject of the inquiry, and to which she was reduced by her debasing habits.

That these circumstances may follow from intoxication, that a continued scene of intoxication may bring on apoplexy and epilepsy, and cause death, and cause such a death which might present the appearances which were shown by this man, cannot, I believe, be contradicted. Dr. Ellis said, epilepsy might have produced these appearances, and if the subject had, or was predisposed to epilepsy, he would have thought that the symptoms were those of epilepsy, and if, as a juror, he was to try the prisoner, he would give a verdict of acquittal; therefore, the appearances were consistent with epilepsy. Epilepsy is the disorder, of which, in the opinion of Mr. Kirby, he died; an epileptic seizure, he said. That was the disorder which Mr. Ellis said, might have occasioned his death. Mr. Kirby says, (I think that is the fair result of his evidence,) that he could not say whether the appearances presented, in the state of decomposition of the body, were inconsistent with death by strangulation or suffocation, but upon that fact, you must be satisfied. You are, then, to take the opinions of the medical men. The subject of this inquiry, according to the evidence, was not known to have had epilepsy, he was not known to have had any fit, according to the evidence given to us. You will then, not exclude from your consideration the conduct of the prisoner. You will determine, first, was there concealment on her part? did she conceal the death? did the death occur before it was announced? what was the object of that concealment? was it to keep the body until all traces of violence were effaced? was it from any other object, or was she in such a state as to be incapable of knowing the fact, that her husband was dead, with whom she said she had lain on Friday and Thursday?

Gentlemen, I am afraid I have exhausted your patience in the investigation of this case, but it is one requiring investigation. You will come to a calm and deliberate judgment. You will consider the observations I have made to you, they are intended for your information, they are not to sway you, not to coerce you. You are the constitutional judges of the fact, you will dispose of this case as honest and conscientious men. If you shall be satisfied, beyond any reasonable doubt, that the deceased came by his death by violence, you will then consider, under what circumstances that death may have been occasioned, whether it ought

to be viewed as murder or manslaughter. If, on the other hand, you are not satisfied, that the death was occasioned by violence, you must not convict the prisoner on suspicion. You must not convict her on probability, however strong. If you have any doubt, as thinking men, you will give her the benefit of that doubt, and say so by a verdict of acquittal.

I sincerely concur in the concluding prayer of the prisoner's counsel.

At a quarter to 4 the jury retired, and in half an hour returned into the Court, which was in a state of breathless anxiety, with a verdict of "Not Guilty."

The Court then adjourned.

The Foreman of the Jury asked for a copy of the Inditement. Baron Pennefather said, it was not usual to send up to the Jury the Inditement. The Foreman said, we were told by the Crown Counsel, that we should find a verdict of Guilty of murder or acquittal. Baron Pennefather said, when the Bill of Inditement is for murder, the Jury can find a verdict of manslaughter.

THE END.