

TRIAL

OF

ISRAEL THAYER, Jr. ISAAC THAYER, AND
NELSON THAYER,

**FOR THE MURDER OF
JOHN LOVE,**



AT THE COURT OF OYER AND TERMINER OF ERIE COUNTY,
AT THE COURT HOUSE IN BUFFALO IN APRIL LAST ;

HIS HONOR,

REUBEN H. WALWORTH,

Circuit Judge for the fourth Circuit, presiding.

TO WHICH IS ANNEXED,

THEIR CONFESSION.

SECOND EDITION.

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TRIAL, &c.

The People,
vs.
Israel Thayer, jr. and
Isaac Thayer.

} Indictment for the Murder
of John Love.

This cause came on to be tried at the Oyer and Terminer, held at Buffalo, in the county of Erie, on the 21st April, 1825, before the Honorable REUBEN H. WALTHORTH, Judge 4th Circuit.

E. WALDEN,
SAMUEL RUSSEL,
JOHN G. CAMP,
CHRIST. DOUGLASS,

} Esquires, Judges of Erie
Common Pleas.

Counsel for the people—H. B. Potter, District Attorney, Sheldon Smith, and Henry Brown, Esqrs.

Counsel for the Prisoners—T. C. Love, E. Griffin and E. B. Allen, Esqrs.

The prisoners had been previously arraigned on an Indictment consisting of four Counts, and plead not guilty.

The Court asked prisoners' Counsel, whether they object to the two persons being tried together? Their consent being given, the Clerk proceeded to call the Jury.

Barty was first called, when defendants' Counsel put the following question. Have you made up an opinion as to the guilt or innocence of either of the prisoners at the Bar?

By the Court.—That question is improper. Have you formed and expressed an opinion as to their guilt or innocence?

Prisoners' Counsel.—We object to any Juror who has formed an opinion, whether he has expressed it or not, and think we can show that to be the proper question; and cited 2 Chitty C. P. 443, and 371.

Court.—The Juror must have expressed an opinion, as well as formed it, if this is intended as a principal challenge, and not a challenge to favor.

P. C.—Except to the decision—and insist upon the right to put the question whether Juror had *made up* an opinion ; and if he had, to exclude him. “If his opinion be made up, it is of little consequence to the prisoner whether it has been expressed or not.” Reference was made to Selfridge’s trial, 1 Johns. R. 350.—6 C. H. Recorder 71.—6 Johns. R. 347.—1 C. H. Recorder 24.—1 Cowens’ Repts. And it was contended that none of the authorities decide that the having formed an opinion *was not* sufficient to exclude a Juror, and that the reason for it was as strong where an opinion had been formed, as where it had been expressed, if not stronger.

Court.—A Juror having *expressed* an opinion, it is to be presumed that he will be more biassed and apt to adhere to it, than if he had not expressed it.—And so the question was settled.

The Juror was then peremptorily challenged.

The following Jurors were sworn :—

James Clark,	O. Masnfield,
Thomas Decker,	L. Evans,
Reuben Rodgers,	M. Dunn,
Geo. Blackman,	E. Knight,
J. P. Morey,	R. D. Crego,
S. Slade,	J. Brown.

Before the last Juror was called, the prisoners’ Counsel having made twenty peremptory challenges, insisted on the right to challenge twenty others, as there were two prisoners on trial, each of whom had a right to his separate challenges. Court decided that if tried together there could be but twenty peremptory challenges.

The District Attorney opened the cause to the Court and Jury in substance as follows :

Gentlemen, The cause now to be submitted to you is the most important that can occur in human jurisprudence, a cause which requires the exercise of all your candor and intelligence. It has fallen to your lot to sit in Judgment upon the lives of two of your fellow men. The prisoners stand indicted for the murder of John Love, have pleaded “not guilty,” and have put themselves upon their country for trial, of which country you are. The crime charged is one of the deepest, die, the most abhorrent & revolting to our nature, it equally

shocks the feeling of the civilized man and the savage. We find in every human breast the same horror of the crime the same dread and detestation of the perpetrators. The crime has been known from the beginning, it is to be heard of in our first records, we are not to look for its history in our statute books alone. It is to be found in every page of the history of man. But for its punishment we look to the laws of the land, the laws of nature and the laws of God. It equally contravenes them all and all equally denounce the crime and declare and penalty. "Thou shalt not kill" is a law announced by the great law giver of the universe to which nature and human reason, and the wisdom of ages have responded assent.

An essential ingredient of the crime of murder is malice, or the intention of killing. Malice is either express or implied; with the latter we have little to do, or with the implication of law in particular cases of homicide. Every killing of a human being is not to be accounted a murder. Malice aforethought, or a determination to kill is essential to constitute this crime. Judge Blackstone defines murder to be "the unlawful killing of any reasonable creature in the king's peace with malice aforethought, by a person of sound memory." Express malice is now the grand criterion which distinguishes murder from other killing. It is defined to be a sedate deliberate determination of the mind, and a formed design to do the injury, which formed design is evidenced by external circumstances, as laying in wait, previous menaces, former grudges and concerted schemes.

From these definitions, I apprehend no difficulty as to the evidence of express malice in the case before you.—As to John Love's death it will be shown to have been most awfully and too successfully premeditated. We are next to make out by whom the crime was perpetrated, or rather that it was done by the prisoners, or that they were instrumental in it. For if more than one person be engaged it is no matter which gave the fatal blow, or discharged the fatal bullet; so as the others were present aiding, abetting or assisting in the act. The law in such a case makes them all principals. This inquiry will involve an examination of a long and tedious train of circumstances. As to

this investigation I must invite your particular attention and solicit the fullest exercise of your patience.

When crimes so flagrant and so universally abhorrent as the one charged are committed, witnesses to the fact are not often called upon. The murderer hides his head from humanity and light. The deed is done in darkness and in private. The intention is to evade discovery and resort is had to solitudes, where there is no human ear to hear, nor eye to detect, nor human arm to stay the fatal blow. Such was the case of the murderers of John Love. There was no suicide, as will clearly appear from the testimony. But whether murdered in the day time or the night, the foul deed is enveloped in midnight darkness. It will not of course be expected of me to produce positive evidence of the infliction of the blow, or the discharge of the bullet that launched him into eternity. From the nature of the case : that evidence does not exist for the public prosecutor. But I expect to prove such a train of circumstances, such a connected chain of facts, perfect in every link, as to remove from your minds every reasonable doubt ; and possibly every vestige of scepticism that the prisoners are the murderers.

If you find satisfactory evidence of the prisoners guilt, you are bound to act and I trust will independently decide them to be guilty.

As the evidence will be of the kind called presumptive, I will read an authority as to the nature of such proof. Mr. P. here read from 1 Phillip's Evidence 117, Dunlap's edition, as follows :

“ The proof is positive, when a witness speaks directly to a fact from his own immediate knowledge ; and presumptive, when the fact itself is not proved by direct testimony, but it is to be inferred from circumstances, which either necessary or usually attended such facts. It is obvious, therefore, that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed unless the fact, which is inferred from them, had also existed ; and that a presumption can only be relied on, until the contrary is actually proved. In order to raise a presumption, it cannot be necessary to confine the evidence to such circumstances alone, as could not have happened, unless they had been also attended by the alleged fact,—for

that in effect would be to require in all cases evidence amounting to positive proof;—but it will be sufficient to prove those circumstances, which usually attend the fact. If the circumstantial evidence be such, as may afford a fair and reasonable presumption of the facts to be tried, it is to be received and left to the consideration of the jury, to whom alone it belongs to determine upon the precise force and effect of the circumstances proved, and whether they are sufficiently satisfactory and convincing to warrant them in finding the fact in issue.—However, for the purpose of trying the weight and effect of such presumptive proofs it will often be of the utmost consequence to consider whether any other fact happened which might have been attended by the same circumstances, and with which of the facts they are more consistent.

“It has been very justly observed, that when the proofs are dependent on each other, or when all the proofs are dependent upon one, the number of proofs neither increase or diminish the probability of the fact; for the force of the whole is not greater than the force of that on which they depend; and if this fails they all fall to the ground. But when the proofs are distinct and independent of each other, the probability of the fact increases in proportion to the number of the proofs; for the falshood of one, does not diminish the veracity of another.”

Mr. P. observed—That positive proof, if unimpeached precludes all possibility of error. Circumstantial, leaves a possibility of mistake. But the latter is often more satisfactory and convincing than the former. A single witness may swear false. A number of unconnected & distinct circumstances each depending on itself and proved by different witnesses all bearing upon the same point and tending in the same result, must together speak the language of truth. If circumstances are shown which the prisoners might rebut, but neglect or decline it, they must be taken strongly if not conclusively against them; and the conduct and efforts of the prisoners in such case being assisted by able counsel, will materially effect the force and influence on your minds of the circumstances which I am about to produce. Mr. Potter here observed that he would not go into a detailed statement of the facts as he expected to prove them. The facts would present a horrible picture of human depravity and the terr

ble effect of human passions when urged on by vengeance or cupidity, and must necessarily rouse every breast to indignation. But he wished to give no occasion for the complaint that the jury had in the outset of the trial been prejudiced by the statements of counsel. He said the jury ought to be cautious and diligent in the investigation in proportion to the heinousness of the crime. The cause was an important one—a very important one. The life and death of the prisoners were in their hands, and for the sake of justice and the peace of their own consciences the jurors should discharge their duty with caution and fidelity. Try them on the law and evidence, not on the rumors or stories that are afloat. They had doubtless been tried over and over again in this county, and particularly in the circles in their neighborhood and perhaps generally pronounced guilty. But this was the first time they had been arraigned for a legal trial.—This is the first time you hear of them or their offence.—If they are guilty you must so find them. If so they are unfit for human society. It will be urged to you that there exists great excitement in the public mind against the prisoners.—There is excitement undoubtedly. But that there is or has been undue excitement on this occasion, I deny. On the announcement of so flagrant a murder as appears here to have been perpetrated, is it strange that excitement should prevail? The whole community ought at once to arm and turn out for the discovery of the felons. The alacrity and vigilance of the people of Boston is an evidence that their moral sense still exists and that virtue still prevails amongst them. With such a people your life and property may be considered safe. But prejudice or excitement cannot alter guilt or innocence. Truth is and will be the same.

Mr. Potter here closed. But upon an intimation from the Court that an outline of the evidence as expected to be given would assist both Court and jury in their apprehension of the facts, he proceeded and gave a succinct statement of which the testimony was but little more than a repetition.—It is not therefore thought worth while to insert it.

TESTIMONY ON THE PART OF THE PEOPLE.

Daniel Ingalls, Physician, first sworn on the part of the

People. He says he was called, on the 24th Feb. 1825, to hold an inquest, as coroner, on a body found in Boston, near Israel Thayer, Jun's. The body was at the school house in Boston—was said to be the body of John Love. On examination there appeared to be a ball hole entirely through the head. Ball appeared to have passed in at the right side of the head and out at the other. The hole was above the cheek bone near the outer angle of the eye—passed the probe through the head, and met no obstruction but the fragments, &c. The ball passed near, but below the brain, apparently. Thinks it would not produce instant death. He might have lived a few hours, perhaps days. If the brain had been injured, instant death would not necessarily ensue, but it might—but most likely it would. The hole was the smallest on the right side, and we concluded that the ball entered on the left side. There was another wound on the back of the head near the crown or vortex—fractured the skull bone, the wound was up and down the head, and appeared to be done with the head of an axe.—The bone could be pressed inwardly, and on removing the pressure, would regain its place by the elasticity of the brain. The skin was also broken and the flesh apparently much bruised. Fracture of the bone was about two inches long and one or one half inch wide. The effect of this wound would be to induce stupor and probably terminate in death. It probably affected the brain. From its situation it would compress the brain. There was another bruise behind the left ear, on the thick part of the temporal bone, I believed it to have been given with the same instrument as the other most probably the head of an axe. The skin was broken and flesh bruised. The bone was not fractured here. It would require a hard blow to produce death in that place. It might produce concussion if hard enough. Could not tell decisively the effect of this blow. There was another wound across the face or cheek extending down to the wind pipe. Do not know on which side it was. Cannot say whether it was cut or torn off. Part of the cheek was cut down to the bone—not cut off. The flesh on the upper and lower jaws was partly cut off, so as to leave the bone bare on both jaws. The neck appeared to be broken. The two bones forming the bridge of the nose were broken down; flatted down en-

tirely. I cannot say where the neck was broken. The vertebra, or ligaments appeared to be separated, The body appeared to be partly frozen, especially the feet and fingers. I was satisfied that the neck was broken, but cannot say where, whether near the head or lower down. The effect of the dislocation of the neck would be instant death or not, according to the manner of it. There are in the books, instances where death did not instantly ensue upon a dislocation; it depends upon the injury done to the spinal marrow, It would probably produce instant death. It would produce a paralysis of all the lower parts, inevitably. The wound on the face extended down under the chin into and across the wind pipe. It appeared there to have been cut by a sharp instrument, like an axe. I do not know whether one or two blows produced the wound. An axe might do it by one blow I think, if the stroke was a glancing one.

Cross examined by P. Counsel.—Witness says he cannot determine whether the ball was from a pistol, a musket, or rifle. Formed no precise idea of the instrument that gave the wound on the back of the head. Tho't it an iron instrument, most likely an axe. Did not observe the cheek bone was fractured. A glancing stroke of an axe might have given the wound on the face and neck. If given with a sword, or such a kind of instrument, the blow must have been powerful. I cannot say from the angles of that wound that it was probably made by a sword or any other springing instrument. It was across the face and chin and the jaw bone was apparently dislocated, or the integuments had given way and were injured. Whether the blow of an axe would carry off part of the cheek bone would depend upon the direction of the blow. This apparently was a glancing blow.

On the examination by Prosecutor.—He says the body at the school house must have been dead some considerable time. Putrification had commenced, and proceeded so far that the body was very disagreeable. The winter has been quite open, and rather warm; though there had been some snow. Can form no judgment as to the time the body had been dead. Whether 4, or 8, or 10 weeks. That depends materially upon circumstances connected with his life, habits, manner of death and burial. I discovered no other wounds on the body.

F. T. Jones.—I found the body the day before the Coroner's Inquest was held, in a field on Israel Thayer, jrs. land, about 30 rods from his house, near the foot path from Israel's to Irish's. The grave was directly in the old pathway. It had been an old road before the land was cleared. When the wood was chopped some trees fell across the path at this spot, and the path had turned round the trees and directly came in again. The body lay in the old path near a large log. I think the grave might be seen from the new path. Especially in the winter. That morning while I was summoning the people to assist in making search for the body, Mr. Britton gave me some information that induced me to search this field of Israel's particularly. One of my company soon discovered the grave. The body lay as close to the log as a grave could be dug. The grave was short and narrow. The dirt had been drawn back from the log and then thrown back to its place & made level and smooth, and old chunks and pieces of wood thrown on the top. The ground was frozen over the body. We dug down at about the middle of the body and found the great coat which I had known Love wear. On opening the grave further we discovered the foot of the body. I then left the grave and went to arrest Israel Jr. and his father at Nelson Thayer's, whom I arrested and come to Esq. Rector's. On my return to the grave the company had removed all the earth from around the body, leaving it in the position as it was found. The body was then laid on a board & carried to the school-house where the coroner's inquest was held. I have no doubt it was the body of John Love. I have known him about two years, and I recognized his body beyond any doubt. Also, the great coat that was found on the body. Before the body was found, I requested Israel Thayer, jr. to help me in the search. He declined, but gave no reason for not going, he was then at the bridge about 50 rods from the body.

John Stafford.—I was the person who found the body first, but was not there when he was uncovered, nor did I see his face until he was taken to the school house. I there examined it and have no doubt it was the body of Love. I also knew his clothes. There was a scar on Love's forehead which I also perceived on this body—know no other mark upon him, his hair was darkish—not really inclining

to be sandy. I was intimate with him and had no doubt it was his body.

Cross examined.—On my arriving near the place of the grave I discovered that some things had been stirred—an appearance that some old chunks of wood had been moved. I got on to the large log and perceived that the dirt had been moved, and called out to the company that I had found him. Perhaps I could have discovered the dirt a few feet off, without getting on the log—but the place was surrounded by brush, logs, elders, &c. I at first thought that wood might have been drawn from the place, but perceiving that a team could not get out from there, I was led to examine more closely when I discovered the grave.

Jones, called by prisoner.—I now recollect that when I requested Israel Thayer, Jr. to assist me in the search, as I before stated, he said he was going after a load of hay, and I think he did that day get a load of hay.

Samuel Washburn.—Witness knew Love well, and saw him last on the 15th day of Dec. according to a settlement made that day with last witness. He was at Nelson's about un down, as also these prisoners. They all four left there and went toward's Israel's. Nelson got before Love while he was mounting his colt. Witness knows the coat spoken of, and had often seen Love wear it. It was the same that he saw at the inquest, at the school house.

Cross examined.—He believes the three Thayers went away together, leaving Love getting on his colt. Cannot recollect that Israel went away first, nor in any different direction, nor his having a plate or crock.

Williom Thompson.—Saw Isaac on the 15th Dec. at Nelson's. He believes it to have been the 15th. Saw Love after sun down pass the saw mill with Nelson, and cross the bridge towards Israel's; and he saw one of these prisoners just ahead. Love was on his colt. The saw-mill is about 3-4ths of a mile from Israel's. He cannot say positively that he saw Isaac there, but Israel was ahead and crossed the bridge first, before Nelson and Love.

Sally Thayer, the wife of Nelson.—She knew Love well. She saw him last at her house, but does not recollect the day, it was towards evening. Isaac was there in the morning, went away to Obed Gwynns, and returned in the

afternoon, and was there she expects when Israel come. Love came there soon after. Israel asked Nelson to go and help him cut up his hogs, which he declined till morning, and said the pork would not spoil until morning. He then asked Love to go home and stay with him all night, which Love also declined, and said he would stay at Nelson's. But Nelson concluded to go and help Israel. Isaac also consented to accompany them on Israel's request, and Love being again requested, said he did not care if he went if Nelson did. They then all left the house nearly together. It was then about sun down, and she saw no more of them that night, except Love was detained in getting on his colt. She saw no rifle with them that day, nor has she seen Love since that time. Isaac came back next morning early, before I was up. He did not live with us, he made it his home at Washburn's, he did not breakfast with me, and I think he said he had breakfasted at Washburn's. There was a person come with him that morning, and but one person. It was between daylight and sunrise when they come. Isaac staid but a few minutes. Washburn's is near by my house, and in going from Israel's to Washburn's, the road passes my house.

The Judge proposed to put some questions to this witness, the answers to which might possibly have a bearing upon a subsequent trial, and if counsel wished it, those jurors not sworn on this trial would retire from the room.—The P. C. making no reply those jurors retired.

In answer to the Judge. Witness said she had children, the oldest about five years of age. And that no person except her children and a girl of 13 years of age, named Laura Willson staid with her on that night. Laura lived at Washburn's and came to stay with me. She had lived with me, and often came home. I did not send for her that evening. She was there in the morning when Isaac came there. Nelson the husband was about till morning, but Laura did not sleep with witness. Nelson was frequently absent during the night, has frequently staid at the nearest neighbors nearly all night.

It being half past one o'clock the Court took a recess of one hour. Two Constables being sworn to take charge of the Jury. The jurors were charged to refrain from all

conversation on the subject of this trial, among themselves or with others, and to take their refreshments together.

Pardon Pierce.—Says he lives one mile from Israel Thayer's, nearly north. About the 15th Dec. last, he heard the report of a gun in the night, at late bed time, say at 9 or 10 o'clock, but nearer 11 than 9, in a direction a little east of south, very nearly in the direction of Israel Thayer's. At the time I thought it at Irish's, but did not think of Thayer's. Irish lives, say 50 rods from Israel's. This was before the 18th Dec. I recollect from the following circumstances. I finished clapboarding my house on Saturday the 18th Dec. My wife was absent when I heard the gun, and being out door when I heard the report I recollect that the ends of my new house were clapboarded, but the sides were not, and the gun was fired the same week of the Saturday on which I finished. On hearing the report, it first struck me that there might be shooting at candles as was sometimes the case at Nelson's. But the report was not in that direction, but more directly from Israel's.

Cross examination.—The direction of the report was not far from either Irish's or Israel's. I lately ranged by some trees and found it to bring me between their houses. The Thayer's have been in the practice of shooting at candles in the evening ever since I knew them. I think I can distinguish between the reports of rifles and muskets. Muskets give a longer report, and which can be heard further. It was my opinion at the time that this was the report of a rifle. It is true that at the time I thought of the shooting of rifles only, and only of the direction to Irish's; but from my present recollection I fully believe it was a rifle.

Benjamin Sprague.—Says he lives about half a mile from Israel Thayer's, nearly north east. Heard a report of a gun on the fourth day of the week, the 15th Dec. my wife and I thought it nearly 11 o'clock in the evening. The report of the gun seemed to be about Israel's house. After Love was found, I began to reflect on the time I heard the gun. My wife first recollected it. She brought to my mind our conversation at the time—of where I had been that day. I had been to A. Kester's about two and an half miles and bought me a hog. The next was our Sabbath day on Wednesday, and I asked Kester whether he was go-

ing to meeting the next day, and if he was, whether he would bring my hog along for me. I gave my note to Kester for the hog; he read the note to me and I signed it and have not since read it. That evening I said, as I had to go for the hog early, I would not set up late, but I was up later than I thought for. She reminded me of my going to bed early, and as I went out of the door the gun was fired—then had my mind on the subject of going for my hog. When I went in she asked me what the firing of a gun so late meant. I thought probably an owl might have gotten among some neighbor's hens. A Kester is a Quaker, but I was never at his house more than two or three times. On that day I asked him if he thought he would get his hogs killed in time to bring mine along as he went to meeting, as I had rather pay him for it than to go myself for it. He was fearful he would not. I went after the hog on the 16th of December. The note, as he read it to me was dated one month back, the 11th instead of the 12th month; but I know it was the 16th December when I gave it. I bore the time of its falling due in my mind. It was the 16th of the 11th month, and the name of the month is not in the note. The note was here produced, and identified. It was in Kester's hand writing, and dated 11th month 16th—and witness signed it. He wrote a first note and made a mistake. I informed him of it, and he then wrote this one. The first was payable 1st of 12th month *next*. His wife observed that that would be at a year, as the 1st of the 12th month alluded to, and meant, was just past—and so it was altered to this note. I was, by my contract, to pay within a year. The course from me to Irish's and to Israel's, is nearly the same.

Arnold Kester.—Says he sold the hog to Sprague last fall, and it appears it must have been on the 16th Dec. He thinks there is a mistake in the date of this note of a month. But does not know whether he killed hogs in the middle of Nov. or middle of Dec. Benjamin Kester butchered for him.

Cross examined.—Says he had no idea of the mistake in the note till this affair came up. Last week Mr. Torrey made enquiries of me concerning it—and on examination I was fully satisfied of the error. From my own knowledge I cannot say it is a mistake. I am a Quaker by birthright

I generally call the months by name—and am as familiar with the months by numbers as by name. I do not know as I ever made a mistake like this before. I did write a first note that was wrong, being made payable the 1st of 12th month *next*—this was the mistake. My wife knew it was designed to be due the 1st January, 1825—Whereas it would, as written, fall due the 1st Dec. 1825. I intended to give the credit to 1st Jan. 1825. I also perceive from our conversation, that had it been given on the 16th Nov. last, it would have fallen due on the 1st of Dec. last. I think I killed hogs on meeting day, and that Sprague asked me to carry his hog home. I had doubts whether I should get through in season to carry it, as I went to meeting. The meeting was on Wednesday, the 16th. On an appeal to the Almanac of 1824, it appeared to the Court that the 10th Nov. Wednesday, would be the Friends' Sabbath; whereas the 16th of Nov. would fall on Tuesday. The Prisoners' Counsel then insisted that the note is dated the 10th, but the witness is confident that his figures on the note mean the 16th.

Daniel A. Pierce.—Says he is 11 years old—can read some, but cannot write. *Question by the Court.*—He says he must not, when on oath, tell a lie—but must tell all he knows on the subject. Allowed to be sworn. I lived at Israel's when he killed hogs, and that evening Israel told me I might go home and stay that night. He gave me a hog's pluck to carry to my mother. I staid all night, and in the morning at daylight started to go back to Israel's. I met Isaac & Nelson, going towards Nelson's, just by B. Sprague's, before they got to the saw mill, about day-light. I did not ask Israel whether I might go home—he told me to carry home the pluck, and to stay all night, if I pleased. I started about the sun two hours high, at night; but cannot tell the time very near. I had once or twice before that, asked Israel if I might go home, to stay all night—he let me go. He had not refused me two or three days before, that I recollect. My father and mother were up, when I left there in the morning—it was very early. I got my breakfast—Israel's wife said they had breakfasted two or three hours before I got there. After that time Israel sometimes asked me to go with him to the barn in the evening, to feed the horses; which I

did several times. Once he called me out of bed to go with him, and I helped him feed the horses—I put out the hay, and he put it in the rack. He could have gotten the hay without me. The Prisoners' Counsel wished to know the object of this inquiry—they could see no bearing it had upon the case, unless it went to show that Israel was conscience stricken, and afraid to be alone in the night. The prosecutor replied that such was the object; and observed, that almost any person who had committed so foul a murder, would recoil at being alone in the night. The witness allowed to proceed.—He says he was not always taken to the barn after the hogs were killed. I lived with Israel till he was taken up on this affair. Love had staid there all night—had his colt in the barn, and slept with me. This was a few days, say 5 or 6, before we killed hogs. I saw his colt in Israel's barn two or three days after we killed hogs. Israel told me it was his own colt. It was kept there till Isaac took it away; and while there Israel took care of it, I believe. He said he was going out to do it, and that it was his colt, in answer to my inquiry of whose it was. I have heard the Thayers say they did not believe Love was dead; and that they would have him brought back to this county again. I heard this about the time Israel came to Buffalo with pearl ashes. I know of Love's staying but one night at Israel's. They then came together, and brought his colt. I have never seen him since that time. He used to wear a fur cap, but I have not seen his cap since. His clothes are at my father's—were left there when he was found. Israel has a wife, and a child of a few weeks old, and no other family, but a person named Mattison, lived there and chopped wood a while. He has two beds—he and his wife occupy one, the other was for me. Soon after the hogs were killed, there were some old floor boards taken up in the house they were split, and new ones laid down.

Cross examined.—There were three new boards laid down—they ran about half way across the house. The old boards were set out doors by the side of the house. It was between the fire place and the side of the house in the corner. The splits in the boards were old splits—were so when I went there. I made a hole in the board near the fire place, to put my top handle in. It was the same hole that has since

been talked of as the ball hole made when Love was shot ; but I made it myself.

Borden Thomas.—Love had a note against me last fall for six and a quarter bushels of wheat. Isaac received the wheat of me and gave up the note. When he asked me for the wheat, he told me Love was gone off. I do not recollect the time, but it was in December.

Cross examined.—My note was due the first of January last. Isaac called on me twice before the note was due.—The last time was about the 20th December. This note was given for five bushels of wheat, had by me before last harvest, I think. I do not know of any business he was in except collecting his debts. He was here and there around the country.

Benjamin Fowler.—On the 23d or 24th of December, I purchased a colt of Isaac, in this village—a light, yellow, three year old colt, and paid him \$40 dollars. He mentioned that he was going on the next day, Christmas, to a shooting match. He led the colt and rode a bay mare. He was round the day before endeavoring to sell the colt, and said if he could not sell him to his mind, he should go to Batavia with him. He told me he lived in Boston, and that the colt was the same one that Thayer had down here in the fall ; that he had him of his brother. Nelson, I knew, and he had a colt here in the fall.

Judah Simons.—On the 20th Dec. Israel met me on the 18 mile creek, about one mile from Nelson's. He was on Love's colt—a yellowish colt. He offered to sell the colt to me. He stated he had not bought the colt, but was authorised to sell it by Isaac, who had all Love's business to transact. I know both the prisoners well. It was Israel who had the colt, and offered to sell.

Sally Thayer, wife of Nelson.—Isaac came to our house on the 17th of December, in the fore part of the evening.—The Father was there at the same time he was, and wished him and Nelson to help him at the mill in getting on a large log. They said they would not go then, but would get up before day and assist him. Isaac went away to go to Washburn's, where he then slept. The Father went to bed. Between midnight and day light he got up and called Nelson to put on the log. He then went away after Isaac and soon

came back with him. Isaac then asked Nelson if he was not going to get up; and he then went away. The Father came back in a few minutes, and said it was so dark that he would not then put on the log; and he lay down on the floor. Nelson and Isaac returned just before day light. I paid no attention whether the saw mill went that night. They took no lantern nor light with them; we had no lantern.

William Thompson.—I tended the saw-mill on the 15th December, but was not there on the 17th. I left some logs on the way; do not recollect of any very large ones. The Father is rising of 50 years old, and not a rugged man. He was not in the habit of sawing unless some one was with him.

Rufus Andrews.—I saw Israel on the morning of the 16th or 17th Dec. He came to borrow flour. I had none—he turned to go away, but then turned back, and asked if I had seen Love? I answered no. He replied that he did not know but I might have seen him come along down.

N. D. Rector, Esq.—Isaac was before me on the 17th Dec. to answer for Love in a suit where he was plaintiff, he told me that Love requested him to appear and answer as he was going on to the east ridge (the east side of the 18 mile creek.) This suit was on a note which was in my possession. I had other demands of Love's. I had his demand against Isaac, amounting to \$275 for which he had confessed judgments on oath, and the executions were issued.—The judgments were entered on the 4th Dec. and the executions then were given to Love; I have never seen them since. I had also judgments against Israel. I had other demands of Love's—two notes against Hilliker, about \$5,25. Isaac called on me to get Love's money in the case against Smith. I issued an execution against Israel for Love, of from 7 to 9 dollars, which was paid up into about \$1. Jones the constable called on Israel for it, Isaac said he had Love's power to settle it, and directed Jones to endorse it satisfied. Love told me in presence of Isaac that he had executions against Nelson on which he wanted to sell, to avoid some subsequent executions against him. Isaac was to bid in the property of Nelson and take the judgment of Love against Nelson, and property was then to be instantly levied on as Isaac's, by those executions issued by me. It was under-

stood that Love wanted to give Nelson more time, but if he let his executions run out that were then levied, those other executions would attach upon the property.

The District Attorney produced a power of attorney, purporting to be executed by John Love, empowering Isaac to collect, receive, settle and compound all demands due Love in Erie county, and to defend all suits against him; bearing date the 8th day of January, 1825. The witness says the signature is not Love's hand writing. The name is not spelt right. The *o* in John, is omitted. The first time I saw that power, the name of Nelson was not on it as a witness. Isaac presented it to me twice. When he demanded Hilliker's note, he said he had only a verbal authority.—This was about the last of Dec. I told him to procure a power of attorney, and refused until he did, to deliver the note, or pay over money. He called in January, for the money on it, and produced this power, then not witnessed; but I refused to pay, until it was acknowledged. He said that Mr. Austin told him it was sufficient without even being witnessed. The next time he produced it, was about the 20th Jan. Nelson's name was then on it, as it now appears I refused, however, to pay the money, until it was acknowledged. He then said he was informed that it was not necessary, and mentioned something about obliging me to pay.

Cross examined.—I am considerably acquainted with Love's hand writing, but am not much skilled in detecting forged hands. Love's writing is rather heavy—on old fashioned hand. Five papers purporting to be Love's hand writing were exhibited to witness—he thinks two are Love's; one not his, and is doubtful as to the genuineness of the others. Prisoners' Counsel then stated to the Court, that one of those pronounced to be Love's was just then written, by one of the Counsel.

S. G. Austin.—Says, Isaac called on me to draw this power, and it is my writing. I presume it bears date on the day it was written. They stated to me that they wanted a general power to transact all Love's business. That he was in some difficulty—was apprehensive of being arrested, and was secreted not far off, and had sent them to obtain the power which would be taken to him for his signature. I told them it was unnecessary for Love to come to see me. I ad-

vised them not to have a witness, as law suits might follow—to obtain that witness on every trial, might be difficult; and if not witnessed, he might prove the power himself. This, I think, was in the evening of the 8th, and they represented they could obtain his signature the next. I have seen Love write twice, and have his signatures in my office, which I have lately examined. The signature to this power does not resemble them much—I should not think it his. Several papers were submitted by prisoners' Counsel; but witness cannot decide clearly whether the writing is Love's or not.

John Twining.—Saw love last on the 14th Dec. I believe. He came to me in my lot, about 80 rods from Nelson's. In reply to his question, I told him I was going to Buffalo next day. I came down on the 15th of Dec. and brought Love's order, dated the 14th, on Esq. Austin, for the money or an execution on his judgment against Bennett. I called on Austin and got the execution and returned home on the 16th. When I got near home, I met a man who I understood to be the same Mr. Bennett. He asked if I knew where love was? I answered I did not, but supposed he was at Nelson's. He said he was not there. On the 17th Dec. I handed it to Isaac, on his presenting me Love's order for it. Perhaps I mentioned my having the execution, at the blacksmith's, or at Washburn's. The order was now produced in court, and identified. I had given Love two notes, one for \$30, the other for 30 bushels of wheat. After my return from Buffalo, Isaac called on me, in the evening of the 16th, near sun down, and we had a conversation respecting the Bennett execution. He then, or the next morning, clapped his hand on his pocket, and said he had John Twining there *twice*. I then thought of those two notes. I told him that night that I had Bennett's execution, and not in the morning. The order was read, dated the 17th Dec. 1824, to deliver the Bennett executions to Nelson. The order was brought early in the morning of the 17th, where the father came to call up Isaac. It was a dark and rather a windy night.

Cross examined.—On my examination first, I thought it was on the 14th, and not the 17th, but I now say it was on the 17th. I at first supposed I assisted at the coal pit before I came that time to Buffalo. I now find it was after my re-

turn from Buffalo, where I know I went on the 15th. The executions I got of Austin were dated the 15th, and so is Austin's docket, and an order made there by the Surrogate, is charged to me on the 15th.

George B. Green.—I came to Buffalo the night before the body was found—went to the gaol and told Isaac of it. I first asked Isaac where Love was, he said in Canada, he said he saw him last on Saturday, the 12th of February—Saw him down the Niagara river below Black Rock—that Nelson then went over the river and brought Love across, he said he then paid Love \$ 17. That this was not the first time he had seen him since he went away ; he said he saw him first on the Big Tree road, about 20 miles from my house in Dec. last. He was not in any house but was in a shed—that he was riding along and saw Love under a shed. Saw him again 5 or 6 miles beyond Williamsville or 11 mile creek, as he was riding along he saw Love on the fence, that he then had business with him and paid him money.—The next time he saw him was below Black Rock ; on the 12th Feb. that Love lent Nelson some money to pay him a debt which he received that day, I think he said he saw him in the evening of that day. No one went for Love but Nelson. I then told him the body was found and where, he asked if I was there. I told him I was not, but that Smith had told me it was found. He said it was not so, for Love was in Canada, that he was alive and he had seen him down the river. I told him the body was found between two logs in the woods or swamp, he asked, in the woods between two hemlock logs ? and repeated it 5 or 6 times, and still doubted my word. This was on Wednesday, he said he saw Love on the Saturday before.

At 10 o'clock in the evening two constables were sworn to attend the jury, to keep them together until 8 o'clock next morning, and the jurors again charged to avoid all conversation on the subject of the cause before them, and the court adjourned to 8 o'clock next morning.

At half past 8 A. M. on the 22d the court and jury came in, and the D. Attorney resumed his evidence.

Reuben Irish.—Says that on the night of the 15th Dec. I went to Washburn's coal pit and at no other time. On my way down I heard a gun fired, was going eastwardly to the

coal pit then. Israel's was then east or north east from me. The report was apparently behind me, and cannot tell the time of night. The coal pit was 10 or 12 rods from the house.

Cross examined.—There was a man there with me with whom I had a conversation about two weeks ago concerning it. He and I agreed as to the time and place. His name was Congleton—Washburn's apprentice. The first time I went out to the coal pit was a little after dark. Washburn was with me. We returned to his house and before I went out again he went to bed, but his wife was up. I heard the gun when about half way to the pit—I think it was the fore part of the night but cannot tell near the time.

Aaron Le Clear.—I was at Nelson's on the 16th Jan. Nelson and Isaac went up stairs to look for my note to Love. Could not find it, but Nelson said he had got it. That Love had gone away, and left his pocket book and notes at his father's, and that Isaac went and got them, and handed them over as people called for them. I then agreed to pay to them my note, by delivering the wheat to a third person, to be delivered to them on the production of my note. My note not being produced in the time, I took away my wheat. On the 10th Feb. Isaac and Israel came to me and demanded the wheat; and upon my refusing to pay it, Isaac said that there would be a law suit—that he should send me to Buffalo. On the 14th Feb. I received a letter from Esq. Campbell, of Buffalo, dated the 12th, stating that my note to Love was left with him for collection; and if paid by a certain day, it would save costs. I paid no attention, however, to the letter, and have heard nothing of it since. I have known Love for about five years. He has lived with me. On New-Year's day, I spoke to Isaac about my note; he said he had it, or believed he had. I heard of Love's having run away for forgery, from Nelson, about the 15th Jan. I had previously heard of his absence.

Cross examined.—Israel and Isaac came with a team to my house for wheat. Israel said it was indifferent to him whether they got the wheat or not; but it was Isaac's just and honest due from Love. That I must pay the wheat to him, and settle with Love about the dishonesty of the note, of which I complained at the time. This was on the 10th of February—Isaac then had my note and showed it to me.

Catharine Britton.—I lived at Israel's a short time in November last, left there the latter part of that month, I then staid at Nelson's 2 or 3 days and then went home, which was about 1 1-2 miles. I was at Israel's on the 6th of January and saw him there. I left there for Washburn's about the sun two hours high at night. I went from Israel's to R. Andrew's, then across to Irish's, as it was the nearest.

There is a path running near where the body was found. Israel asked me to come back and stay that night, which I declined. He asked me which way I should go if I did not come back, I told him the path below the house—he replied that that path was bad and said I had better return by the way of his house. There were two paths and which he meant I do not know. I did not know then of the path leading by the grave. In going from Andrew's to Irish's, I might go by the grave by one path and not near it by the other. If I went back by Israel's to go to Irish's the path would not lead me by the grave, it went round it.

Daniel Swain, Esq.—I examined Isaac and Nelson on the 19th and 21st. There was no inducements held out to Isaac on the examination, he was reluctant at first, but there was no threats nor promises used. Here the examination of Isaac was read.

The examinations of Isaac on the 19th and 21st, were not very different. On the 21st, Isaac said while they were near the school house, Love saw a person on horse back, and said he must be off, thinking he was pursued.

Mrs. Sally Thayer.—Recollects of Isaac's leaving a red pocket book at her house, and presumes he bought it. He at least had a red pocket book there. Saw him have it frequently, but it was after Love was missing. A pocket book was found in the chest at her house, but not in Isaac's chest. Does not recollect of seeing it there till they were arrested; but saw it there often after that before the officer took it away. She never heard any conversation between Isaac and Love about his managing Love's business. The book taken from the chest resembles the one here presented. Love had a large red, and a black pocket book; this one taken from the chest is not either of them.

B. Dole.—I think this pocket book is the one Isaac thought of me, or like it. I sold him one of that size and description.

Laura Wilson.—Recollects staying several nights at Nelson's last Dec. Nelson was gone a good many nights, but she recollects nothing about any particular night.

Mr. Rector.—I saw the body at the school house, and have no doubt it was Love's. I knew him well, and knew the great coat. The person found had a scar on his forehead which I did not know of on Love. I knew the color of Love's eyes; his hair was dark; his teeth were all double round teeth. The body answered this description. I examined the teeth.

N. Smith.—I knew Love when living—saw the body and great coat in the grave. No doubt it was Love and his coat. I knew the scar on his forehead—it was 1 or 1 1-2 inches in length. He had said it was done with an Indian tomahawk. I discovered the same scar on the body. I could also identify it by a scar on the foot. I observed his teeth, as Mr. Rector has testified. There was some talk after he was interred, of taking him up to examine for the mark of an anchor on the arm.

Stafford.—I knew Love well, was the first who found the grave. I knew the scar on the forehead, the pantaloons and great coat.

Thomas West.—I knew Love—saw the body at the school house. Have no doubt it was him, though I knew of no marks on him. I perfectly knew the coat, and think I knew the handkerchief that was found round his neck, and have no doubt but this one (produced by Daniel Pierce) was his, or just such an one as Love wore on the 13th Dec. All his clothes were on the body, except stockings and shoes.—I heard the report of a gun in the direction of Israel's just before Christmas. I was then at Mr. Rector's. We thought Irish was cleaning his gun for Christmas. It must have been heard between 10 and 11 o'clock in the evening. We spoke of its being late.

Daniel Pierce. Says this handkerchief is the same one that was taken off the neck of the deceased.

Mr. West cross examined.—When we heard the gun I thought of the direction of Israel's. Mr. Rector was at the door and said he thought it was at Irish's or more down the road. Irish's would be a little east of where I thought it

was fired. A line from Rector's to the grave would run between Israel's and Irish's, rather nearer Israel's.

B. Williams.—I knew Love, but remember no marks on him, observed his teeth to be round except his two front ones, they were flat. I noticed the same teeth in the body found. I knew his coat and pantaloons, the latter were faced with leather, the same were found on the body. I knew the body to be Love's. He once had the tooth ache at my house, and I had occasion to notice his teeth. I saw all four of the Thavers on the 11th of January at Wilson's in Boston, at a shooting match. Isaac had then a number of bills, I should say 15 or 20. He paid the bill in the evening. I saw them all there in the morning. The father paid the bill in the morning.

The court at half past one o'clock took a recess of one hour, in the same form as on the first day.

Thomas C. Love, Esq. opened the defence for the prisoners. After which they went into the testimony on behalf of the prisoners as follows :

TESTIMONY ON THE PART OF THE PRISONERS.

Drs. J. Trowbridge and H. Rutgers Stagg Called on the part of the Prisoners, testified that the time of the decomposition of human bodies, and the decay of animal matter, depended most essentially upon the attendant circumstances, that there was no rule by which to determine from the state of decay or putrefaction, how long the body had been deprived of life. That a man in good health, dying without loss of blood would decay sooner than a person out of health and emaciated. That some degree of heat and moisture was requisite to facilitate the operation of decomposition, that the time must always depend on circumstances, the state of health at the time of death, habits of body, time and place of burial, the state of the atmosphere if the grave was so shallow as to allow that to affect the subject. In the case of Love it would appear that some of the principal arteries were separated, and consequently, almost all his blood must have been lost; and he was so slightly buried that probably the frost penetrated the body, both of which circumstances must have delayed the decay and decomposition of the body.

It was admitted by the D. Atty, that Nelson Thayer Israel Thayer, Sen. now stand indicted for this murder.

Sylvester Ir sh. I do not know as Israel was the owner of the gun last Dec. have sometimes known of his having a gun, and sometimes he borrowed. He told me last summer that he lent Isaac \$4 to go to the east with. On an objection made by the D. Atty. this last answer was held to be admissible evidence, as the declaration was made before the accusation of the murder. Israel and his wife came to make the visit spoke of about dark and he went very soon back again. I should say he came after her as late as 9 o'clock, he then staid some time, the best part of an hour. During the time he staid we had our ordinary common conversation, he spoke of his hogs and their weight. I cannot tell whether Isaac was there when he and his wife came or not, nor before. On being reminded of his former testimony, he still insists his last answer is correct according to his recollection. He never meant to say positively that Isaac was there at the time, nor does he now know. They all came there early in the evening, he did not go away himself at all, that evening.

Sally Thayer. When Isaac and Nelson came home from Christmas shooting, Isaac told me that Nelson had been obliged to sell him his clothes to pay for his shooting. The court intimated that this evidence was irrelevant as to these prisoners, but might avail Nelson something.

The P. C. say their object is to shew that the money had by Isaac was not common property amongst them, and to rebut such a presumption which must arise from the fact previously proven that Isaac paid all their bills at the shooting match.

W. S. Littlefield.—I had some acquaintance with Love, saw him last in Dec. at Nelson's. Q. Did he tell you he was afraid of being arrested for forgery. In reply to an objection from the opposite party the counsel say that as there has been an attempt to show that the prisoners originated such a report, they wish to rebut all such presumption by showing Love's confessions long before he was missing.—By the Court. This evidence cannot be received. It is proved that such a report was in circulation before Love was missing. We have not admitted such testimony on the other side.

William Thompson.—I was at the mill when Bennett came and enquired for Love. I do not recollect that either of the three boys was there. The old man and some other persons were present. The old man said he believed Love went the evening before to his house. He then enquired the direction to it and left us. I think the old man went away from the mill that day.

Z. Skinner, called by the D. Atty.—I saw Isaac give his notes, two notes for a rifle to Ogden, of whom he bought it. He had a rifle of his own before that, for say a year.—I did not know or hear of his having any other.

West.—The grave was about 14 or 16 inches deep and a little rising of four feet long. The dirt on the body was about 6 or 8 inches deep.

Sprague.—Love's body lay bent down in the middle, and at that point the dirt was about 12 inches deep, the feet and head up a little, the feet pressed against the foot of the grave. The dirt had been frozen down to the body. It was close to the log on the S. E. side. I think the bushes shaded the grave some.

West.—The ground all over and around the grave was level—Old wood was broken up and laid on. We got an axe and broke them up—the ground was frozen—the water had leaked in through the dirt and the body had been so long wet and soaked that some part of the skin came off with the clothes.

Jones.—If Israel had a gun I think I should have seen it in searching in his house for property to levy upon.

Daniel Pierce.—Israel had no gun, he once brought one from his father's but I do not recollect the time. He set it up by the side of the house, but I do not recollect whether it was before or after we killed hogs.

N. Smith.—I saw Love's colt at B. Fowler's grocery, in Buffalo, a few days after it was sold to him. Fowler told me he had just bought it. It was the same colt that Love owned.

The testimony being closed by both parties, Ebenezer Griffin, Esq. addressed the Jury on behalf of the prisoners, in an able speech of one hour and a half; he was followed by Ethan B. Allen, Esq. who closed the defence in a lucid speech of nearly the same length.

Both the gentlemen left town immediately after the trial, and as our reporter took but hasty sketches of these speeches, we have not been able to obtain the necessary corrections in season to give their arguments in the proper place.

The Jury retired about 11 o'clock in the evening, under an elaborate and solemn charge from his honor Judge Walworth, and in about half an hour returned a verdict of Guilty against both the prisoners.

On Saturday morning, at 8 o'clock, commenced the trial of Nelson Thayer, on a separate indictment, for the same murder. The evidence in this trial, was substantially the same as that against Isaac and Israel. This cause was summed up on the part of the prisoners, by T. C. LOVE, and E. GRIFFIN, Esqrs. and on the part of the people by H. B. POTTER, Esq. The Jury retired about 11 o'clock in the evening, after receiving a full and impressive charge from the Court, and in a few minutes returned a verdict of GUILTY.

On Monday, the 25th of April, at 10 o'clock A. M. the prisoners were brought to the bar to receive the sentence of the law.

SENTENCE.

NELSON THAYER, ISRAEL THAYER, JR. and ISAAC THAYER—You have been indicted by the Grand Jury of this county for the murder of JOHN LOVE, at the town of Boston, on the 15th of Dec. last. You have respectively had fair and impartial trials, in which you have been aided by faithful and intelligent counsel. After a deliberate and patient investigation, of your several cases, by petit juries they have been constrained and compelled by their consciences and their oaths, to pronounce each and all of you guilty of a most foul and aggravated murder. Have you or either of you any thing to say why the sentence of the law should not be pronounced against you in pursuance of your conviction for this offence.

The feelings and emotions with which I enter upon the discharge of the solemn and important duty which devolves upon the court, and which I am now about to perform, are too painful to be expressed. To pronounce the dreadful

sentence which is to cut a fellow mortal off from society, to deprive him of existence, and to send him to the bar of his Creator and his God, where his everlasting destiny must be fixed for eternity, is at all times and under any circumstances, most painful to the court. But to be compelled, at one and the same time, to consign to the gallows three young men who have just arrived at manhood, standing in the relation to each other of brothers, and connected with society in the tender relation of children, brothers, husbands and fathers, presses upon my feelings with a weight which I can neither resist or express.

If in the discharge of this most painful duty that can ever devolve on any court, I should in portraying the horrid circumstances of this case, make use of strong language to express the enormity of your guilt, and the deep depravity which it indicates, I wish you to rest assured it is not with any intention of wounding the feelings of your relatives, or for the purpose of adding one pang to your own afflictions, while the righteous hand of an offended God is pressing so heavily upon you. But it will be for the purpose, if possible, to awaken you to a proper sense of your awful situation, and to prepare you to meet the certain and ignominious death which shortly awaits you. It is to endeavor to soften your hearts and to produce a reformation in your feelings; that by contrition and repentance you may be enabled to shun a punishment infinitely more dreadful than any that can be inflicted by human laws—the eternal and irretrievable ruin of your guilty souls.

From the testimony which was given on the trials of your several cases, there is no room to doubt the certainty of your guilt, or the aggravated circumstances attending the perpetration of the bloody deed. The man whom you have murdered was your companion and friend. He had loaned you money to relieve your necessities, and to support your families. He was the lenient creditor, renewing and exchanging his judgments and his executions from time to time to prevent the sacrifice of your property. He was the lodger of your father, and frequently enjoying the hospitalities of your own roofs.

In the unsuspecting hour of private confidence, you decoyed him to the retired dwelling of Israel Thayer, jr

and there, while he was enjoying the hospitality of the social fire-side, you stole upon him unperceived—you aimed the deadly rifle at his head, and with the fatal axe you mangled and murdered your victim, mingling his blood with that of your butchered swine. But your guilt and depravity did not stop here. Scarcely had you committed his lifeless corpse to its shallow grave, before you began to collect and riot upon the spoils of his property. To the crime of murder you added those of theft, fraud and forgery, and repeatedly imprecated the vengeance of Heaven upon your perjured souls.

The punishment of death has been denounced against the crime of murder, not only by the laws of all civilized nations, but also by that law which was written by the pen of inspiration, under the dictation of the Most High. And as God himself has prescribed the righteous penalty for this offence, so there is strong reason to believe that very few murders are committed, which are not ultimately discovered, and the perpetrators thereof brought to merited punishment.

Wretched and deluded men!! In vain was the foul deed perpetrated under the cover of darkness—in vain was the mangled body of your murdered companion committed to the earth, and the lonely grave concealed by rubbish; in vain was the little boy sent home to his mother, and the unsuspecting wife removed from her house, that no human eye should be near to witness the foul and unnatural murder; in vain did you expect the snows of winter to conceal the grave, until the body of your victim could be no longer known and recognized. You forgot that the eye of God was fixed upon you. The eye of that God who suffers not even a sparrow to fall without his notice. You forgot that you was in the presence of Him to whom the light of day and darkness of midnight are the same; that he witnessed all your movements; that he could withhold the accustomed snows from falling on the earth, or his breath could melt them when fallen, leaving the grave uncovered and thus exposing you to detection and condemnation. His vengeance has at length overtaken you. The sword of human justice trembles over you, & is about to fall upon your guilty heads; you are about to take your final leave of this world and enter upon the untried retribution of a never ending eternity.—

And I beg of you not to delude yourselves with vain hopes of pardon, which can never be realized. Your destiny for this world is fixed, and your fate is inevitable. Let me therefore, entreat you, individually and collectively, by every motive temporal and eternal, to reflect upon your present situation, and the death that shortly awaits you. There is but one Saviour whose blood is sufficient to wash from your souls the guilty stains, even of a thousand murders. Let me, therefore entreat you to fly to him for that mercy and that pardon which you must not expect from mortals.

When you shall have returned to the solitude of your prison, where you will be permitted to remain for a few short weeks, let me entreat you by all that is still dear to you in time—by all that is dreadful in eternity, that you seriously reflect upon your present situation, and upon the conduct of your past lives. Bring to your mind all the aggravated horrors of that dreadful night, when the soul of the murdered Love was sent unprepared into the presence of its God, where you must shortly meet it as an accusing spirit against you. Bring to your recollections the mortal struggles and dying groans of your murdered friend. Recollect the horror which seized you, while you dragged the mangled remains to the place of concealment. Think of the situation of your aged father, to whom you are indebted for your existence.—Think of the grief of your distracted and disconsolate mother, who has nursed you in the lap of affection, and watched over the tender years of your infancy ; who must now go down to the grave sorrowing over the ruins of her family.—Think of the dreadful agonies, think of the unnatural and desolate widowhood to which you have reduced the unfortunate partners of your beds and of your bosoms. Think upon the situation of your poor orphan children, on whom you have entailed everlasting disgrace and infamy, and who are now to be left fatherless and unprotected to the mercy of the world. And when by such reflections as these, your hard and obdurate hearts shall become softened, let me again entreat you, before your blood-stained hands are raised before the judgment seat of Christ, that you fly for mercy to the arms of a Saviour, and endeavor to seize upon the salvation of his cross.

Listen now to the dreadful sentence of the law—and then farewell for ever, until the court and you, with all this

assembled audience, shall meet together in the general resurrection.

You and each of you are to be taken from hence to the prison from whence you came, and from thence to the place of execution, and there, on the seventeenth day of June next, between the hours of twelve at noon and two o'clock in the afternoon, you are to be hanged by the neck until you are DEAD!

And may that God whose laws you have broken, and before whose dread tribunal you must then appear, have mercy on your souls!

CONFESSION.

Upon the conviction of Nelson Thayer, he was removed to the gaol, where soon afterwards the three brothers made a full confession of the murder of John Love, to U. Torrey, Esq. the under sheriff, in presence of witnesses.—The circumstances related by them were as follows:—

They had contemplated the murder of John Love for 4 or 5 weeks, and it was concluded at length, that the deed should be perpetrated on the 15th of Dec. That the boy, D. Pierce, on that night should be sent home, and the wife of Israel induced to make her visit, as is testified to. The rifle was loaded by Israel and left by a log near the house, of which he apprised Isaac who was to make use of it, in the first instance. They had doubts whether they should be able to decoy Love to Israel's on that evening, but in case they did, it was agreed that Isaac should shoot him through the window while Nelson and Israel were engaged in cutting up the pork in the same room, and they were to despatch him in case the rifle failed to take complete effect.—That about 7 o'clock or half past, and not later, for on this point the witnesses must have been in an error, while Nelson and Israel were in the room, and Love was sitting before the fire with his boots and stockings and great coat off, in conversation with Nelson, his face partly turned towards Nelson and from the fire, Isaac came to the window as concerted, and shot him through the head, and immediately walked away to Irish's. Love did not fall, but convulsively

drew up his feet and shoulders, and sat erect in the chair. Nelson then with the meat axe gave him the blow behind the ear, as described by the witnesses, which sallied him over a little, he then inflicted the wound upon the face and neck as he lay upon the floor. Nelson does not recollect of giving but one blow as described on the face and neck, and doubtless the peculiarity of that wound and the appearance it presented of being the effect of two or more blows, results from the position in which he lay upon the floor. The body was then drawn out of the house by the two, and secreted near the end of the house; they finished cutting up the pork. Isaac then returned and exclaimed, you have been butchering here it seems; to which Nelson replied that there had been butchering done. Isaac then said, well I have done my part, and will do no more, and again went away. The blood upon the floor was then washed up, but there being some still upon the chair in which Love sat, that was partly dried and difficult for them to wash off, a few pieces of bloody meat were put into the chair, which was, by Israel's wife on her return, laid away, and the chair washed clean.

After the second departure of Isaac, the other two brothers took up the body and carried it to the brook, in the ravine, near the place of the grave, with the intention of burying it in the bottom of the brook; but after digging a few inches they were prevented from going further by rock. They then buried it where it was ultimately discovered.— They then returned to the house, and from there went to Irish's; and all three of the brothers were there together, and staid some time, and returned to Israel's, together with the wife. The Father was perfectly innocent and ignorant of the murder.

Isaac states that when he first brought down the rifle to fire upon Love, his nerves failed him, and his aim was unsteady; but upon endeavoring to rally himself and reflecting upon some abuse Love had once used towards his aged mother, he regained his firmness, and fired with fatal effect.

Nelson says that when living, he could carry Love upon his shoulders easily. But in his and Israel's attempt to raise him, and carry him from the corner of the house to the grave, such were their feelings, and the dread, that then for

the first time fell upon them, that they found it almost impossible for them both to lift and carry him. That for the whole distance to the grave, they actually staggered under their burthen. The brothers say, that since Love's death they have felt neither peace nor security ; but have been in a constant state of alarm and apprehension. That they have felt an awful, but indefinable dread of being alone in the dark—which feeling they have constantly endeavored by every means in their power, to shake off, but without effect. They all attest to the justice of their sentence, and manifest no hope of receiving a pardon.

The indifference to their fate, and the hardihood they manifested on their arrest, and even down to the time of the fatal verdict of guilty, seems to have forsaken them. Their feelings appear to be softened down and chastened ; and it is understood that they are all most assiduously engaged in reading the gospel of mercy and peace, and preparing themselves to appear at that bar, before which neither testimony nor confession is required.

The awful sentence of the Court, was carried into effect, at the time appointed, (the 17th June, 1825.) They were conveyed to the gallows a little east of the village of Buffalo, where the fatal arrangements were completed and they were at the same instant launched into eternity !

There is not probably a parallel case to this in the history of man. It was truly afflicting to see three young men, brothers, thus brought to an ignominious

ious death for a crime committed only to gratify a love for idleness and a lust for money. May all others take warning by their example!!

It was judged that there were upwards of 20,000 spectators present to witness their execution.