

TRIAL  
OF  
*JAMES GRAHAM,*  
Before the Honorable AMBROSE SPENCER, Esq.  
FOR THE  
MURDER  
OF  
HUGH CAMERON & ALEX-  
ANDER M'GILLAVRAE,  
IN DELHI, DELAWARE COUNTY,

JULY 14<sup>TH</sup>, 1813.

—  
TAKEN DURING THE TRIAL,  
By AARON CLARK, Esq.

JUNE 17, 1814.

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ALBANY:  
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# TRIAL

OF

## JAMES GRAHAM.

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**J**AMES GRAHAM was indicted in 1813, and arraigned on the indictment, and plead thereto—*Not Guilty*.

On Friday, June 17, 1814, at 7 o'clock A. M. at the Court-House in Delhi, in Delaware County, this trial commenced, before the Hon. Mr Justice SPENCER. The house was crowded beyond example at a very early hour. It is calculated that *two thousand* persons attended the trial.

On the 15th June, the prisoner had been brought into court, and was asked if he had counsel? He answered in the *negative*, and said he had no means of *procuring* or *rewarding* them. In answer to a question put by the Court, he said he wished Counsel assigned him, and requested that Mr. Root and Mr. SHERWOOD might be assigned. Mr. Street, the District Attorney, said he had himself obtained Mr. *Sherwood's* consent to aid him on behalf of the people. The Court then requested Mr. *Root* to undertake the defence of the prisoner. He complied, and requested the Court to associate Mr. *Douglass* with him, in so arduous and important a trial, which was done.

On the 18th June, the Court being opened, the Clerk proceeded, in the usual form in capital cases, to call and swear the Jury. The following persons were called and sworn as the Jury, viz.

Phileman Smith,	Seneca Olmsted,
William Cleaveland,	Simeon Elmore, jun.
Thomas Graham,	Ephraim M'Call, jun.
Levi Bartlett,	Joseph Worden,
Matthew Wiard,	Moses Wakeman,
William Kentfield,	Josiah Hanford.

The following persons were called, challenged and not sworn, viz.

Benjamin Pine,	Peter Hull,
Joseph M'Claughry,	Joseph Crawford,
Asa Merriam,	Asa Grant,
David P. Brewer,	Salmon Perkins,
Isaac Cleaveland,	Daniel Sawyer,
James Bromley,	John Stewart, jun.
Amos Walmsly.	



Mr. *Street* (District Attorney) then opened the case to the Jury, on behalf of the people, in a very mild, candid and interesting manner. The Reporter regrets extremely, that from the rapidity of Mr. *Street's* utterance, he has not been enabled to give his *whole* address. This, added to the circumstance of the great length of the trial, has induced the Reporter to omit it altogether. Mr. *Street* stated to the Jury, in a very clear and intelligent manner, the nature of their duty—the greatness of their responsibility—the extraordinary magnitude and importance of the cause about to be submitted to them—and detailed to them, in a very ingenuous and lucid order, the whole evidence on which he intended to rely, on behalf of the state, and proceeded to the examination of the

#### WITNESSES FOR THE PEOPLE.

OLIVER PEAKE, Esq. Coroner, being sworn, testified as follows: On Sunday the 15th July, 1813, at ten o'clock in the forenoon, I was called upon by William Graham, the son of the prisoner, to go over the mountain (as it is called)—he said he did not know but two people were dead there; that they had fought and *killed each other*. I accordingly issued a summons as Coroner—and went over the mountain to the place where he said the bodies were. When I arrived there, I found a great number of people had already collected. The prisoner was there. I saw the two deceased lying dead upon the ground. The Jury were assembled and sworn, witnesses examined, &c. I thought Cameron appeared to have been on the retreat into the woods as he fell. Corpses of Cameron and M'Gillavrae both lying in a foot path—Cameron lay on his face—*there was a wound in his head that reached from one temple entirely over to the ear on the other side of his head—a gash that might receive your arm—it was six inches long, three inches deep, and three inches wide*—There were some other slight wounds about Cameron's person—his head lay from the road or footpath—some brains had flown from Cameron's head. The dead bodies lay just within Graham's clearing, or chopping; M'Gillavrae lay on his back in the above mentioned foot-path, his head was a few inches from a beach tree, that lay across the path about one-fourth of a mile from the turnpike, and about eleven feet distant from Cameron. He had evidently, had several cuts on the back of his head, but the main wound was in his face—*his nose, cheek bone, one eye and under jaw, were jammed to a pumice—one eye only remained—one tooth lay on one breast and one on the other*, and several teeth scattered about near him—he could not be recognized as M'Gillavrae, he was so bruised and mutilated—his head was pressed considerably into the ground. There was a hole in the ground very near the face of M'Gillavrae, that seemed to have been made by jamming; this might have been done by the weapon used, from some little loose dirt, that seemed to have fallen from the stick, after its being drawn from the ground—there seemed to have been some stick stuck or jammed down and pulled out again;



M'Gillavrac's mouth was evidently wounded by jamming—his head was literally split open—there were several other slighter marks of violence. We then began to examine the tracks, and look for some weapon with which we were confident the murder must have been perpetrated. We saw regular tracks only—there appeared to have been no scuffle, by the tracks discoverable, except at the fatal spot. The jury having examined the bodies, were about leaving them and the ground—about two rods from the dead, were perceived the tops or brush of trees, several searched there for the weapon to no effect—at length one of the Mr. Beardsley's crawled into the brush, came out exclaiming "*I have found it.*" This is the same, (here the stick was produced in Court, hereafter described.) The brush, in which it was found, was the top of a tree, that had been felled across the road—it had evidently been a fire stick—it was iron wood, it was about four feet long, and two inches thick, one end for sixteen inches towards the other, was covered with blood, human hair and brains—one end was sharpened something after the manner of a handspike—this (the lower end,) was ruffled up a little, not far from the end. The prisoner was present during all this time, at the place of the dead, he then had on tow trousers, tow shirt, partly whitened, an old vest, all evidently put on that morning. There were some suspicions arose, as to the prisoner's being the murderer. I appointed a committee to go to Graham's house, and make examination, &c. This committee brought to us certain clothes, viz: A shirt and frock, apparently tow—they were wet; water wrung from them, one spot on the collar of the frock appeared of a thickish substance, and brownish color; one on the bosom or about it one large spot on one arm particularly, which was clear through the frock, and shirt sleeve, in the same place—all appeared to have been the stains of blood—appeared to have been attempts made to wash them out. Graham was examined as a witness before the inquest.

Mr. Street, Q.—What did he swear on that occasion as a witness?

Mr. Root—I must, if the Court please, object to this question being answered by *parol*; it should be by the production of his examination taken at the time.

Per Curiam.—Is the inquisition present. A. Yes.

It is not an examination of prisoner as the criminal, but a witness. Proceed Mr. Attorney.

Mr. Street. Proceed, Mr. Peak.

Mr. Peak in continuation Graham on that occasion said, that "the two deceased and himself, set out from Kellogg's to take a cross foot path, about two miles from the Turnpike, about sun down; that after they had proceeded about half a mile from Kellogg's, Cameron and M'Gillavrac began quarrelling—one of them stopped, apparently to look for a stick, or club; one of them was intoxicated, and one of them fell down; that he, Graham, got home just after dark; that they were quarrelling; that, after one stopped to get a stick or club, the other went on with him—then this one also stopped, and said he would



go back that deceased were both *in liquor*; that he had been abused by them before, and that he left them because he was afraid of them. As to clothes of his produced he acknowledged the shirt to be his, but hesitated about owning the frock." So much for Graham's evidence at the time of inquest.

*Cross-examined by Mr. Root.*

Mr. Peak said, that the evidence above recited, he had frequently seen and read over, since the inquest; that it was taken down at the time, by a person of his choosing, (Mr. Munson) and examined by him (the witness,) at the time, and appeared as correct. In further answering, he said, "there is a species of red oily clay, in this county, that will make a brownish stain, that is difficult to be washed out."

JOSEPH KELLOGG,—being sworn said, he had a raising on the 24th July last; there was a *shower* on that day in the afternoon; at nearly 8 o'clock, the prisoner and the two deceased, left his house *together*.—Sun set at seventeen minutes after seven o'clock on that day, witness had examined to know. There were some other persons from the neighborhood of Graham, viz: several of a Mr. Broadwell's family, &c. they went home another way, coming out on to the turnpike two or three miles easterly: the distance from Kellogg's to Graham's is two miles, wanting nine rods; when Graham, M'Gillavrae and Cameron started for home, it had nearly ceased raining; did not discover that Graham, or either of the deceased, were at all intoxicated; that they had enough to feel it; perhaps to feel merry. Witness has a girdling about 30 rods from his house, and extends along the foot path; Graham's clearing extends one quarter of a mile from the turnpike.

*Cross-examined by Mr. Root.*

He said, the road comes from Willson's Clove past his house, and goes on as a foot path; that he remembers to have seen Graham start for home from raising, and one or two with him, and take into the foot path; that this foot path is laid out as a public highway.

*Again examined by Mr. Street.*

He said the *sugar camp*, or boiling place, was at the left of the foot path as they came down to the turnpike, and is only about 3 or 4 rods out of the path.

*In answer to the Court.*

He said it was unusual for people to pass along that foot path after dark; and that there were several logs across it, &c.

ROBERT MASON, was then called and sworn. He said, he was at the raising at Kellogg's; Graham was there; he wore tow trowsers, a tow frock, and old waistcoat; he *thinks* Graham took off his frock at the raising; M'Gillavrae and Cameron came with the prisoner to raising. Witness was at the place when the club mentioned by Mr. Peak, was found; saw the club *before* it was taken from the brush heap; one end was in the ground: the other lay up from it; it seemed to have been pitched there; there was a hole in the ground or leaves, where the club was found, made by the end of the stick, with blood in and



about it; he examined the hole in the ground near M'Gillavrae's head; it was close to his head. Witness left the raising with some of his neighbors about sunset, and came out at Walmsley's, arrived at home about nine o'clock; thinks the prisoner did not work with his frock on that afternoon.

*Cross-examined by Mr. Root.*

He said, the raising was a log barn; that the logs had been drawn some distance; there was mud on the logs; it was common dark colored mud; thinks the raising was finished before the rain commenced; does not remember that Graham's clothes were muddy.

*In answer to a question by the Court.*

He said, he did not observe that Graham, or either of the deceased, were intoxicated when they left Kellogg's.

WILLIAM BLAIR, being sworn says—He lives three miles from Graham's house; Graham's boy gave the alarm in the morning, as he went after the Coroner; went to the place; on his way called at Graham's house, and asked Graham to go with him to where deceased were—after asking Graham where M'Gillavrae and Cameron were, and being informed by him that they were up in the woods. Graham told witness he had been there, but could not stand it to see them any longer. Graham told witness, on being asked where he left them, that he came with them to *top of the mountain*, where he left them; and that they *cut clubs*, and one shook it in the other's face, and said to him, you are not so drunk as you was on another occasion. Graham further told witness, that he came off and left them through fear that they would turn upon him and kill him. Graham did not say any other person was with them. Witness said that himself, J. M'Adams and Paul Beardsley, went first to examine the tracks—they examined the path critically—the hat and one of the shoes of Cameron lay at but a little distance from his body, together; the other shoe lay under one of Cameron's feet, or ankles rather, and was considerably spotted with mud, but the other lying by the hat was clean. For about three rods from Cameron, saw the print of a barefoot track; saw the print of a stick in three places, which seemed to have been jammed into the ground; then compared with those on M'Gillavrae's face; he tracing back the tracks, they could discover but two tracks after they arrived at or near the *sugar camp* path. There was no appearance of there having been a scuffle on the way, and the collars of M'Gillavrae and Cameron were both fast and uninjured when found dead. Some little distance beyond the sugar camp they saw three tracks again. It seems that Cameron was behind M'Gillavrae. The hole in the ground near M'Gillavrae's face was half full of blood. Did not very critically observe Graham when persons were searching for the club. Inquiry was made whether any other persons had passed from the other side of the mountain; witness set on a log—Tingley first went to the brush heap where the club was found—witness remembers that Graham kept his eye stedfastly and anxiously upon him; this excited



some suspicions in mind of witness against Graham—witness himself went, and Graham eyed him in the same manner; others were requested to go there—Graham did not follow *them* with his eyes. After the club was found, some of the persons went to the sugar works or boiling place; there they found a place from which a handspike the size of the one found had been taken recently, from the side of another, the head of the stick was plainly visible; this was not far from where the bodies were—there was, on examination, found to be a hole jammed in the ground from whence the stick appeared to have been taken—remembers that, some short time before, Graham related the affair of going up the hill, he said they were drunk and that he said he was afraid they would kill him; that there were some threats used. Witness further stated, that on a former occasion there was some conversation at Graham's house, with Graham and witness, after Graham had been charged with stealing capt. Leal's money, in which Graham observed that he was clear of it, and that if any man should thereafter cast that at *him* or any of his family, he *would sacrifice him*; that his proud spirit would not allow him to do less. Witness further testified, that the collar of one was fastened with metal buttons, and that of the other with a pin just below the collar.

*Cross-examined by Mr. Douglass.*

He said the only ground of suspicion, on account of the club, at the spot, against Graham, on *his part*, was the circumstance of Graham's behavior while witness and another were searching for it.

*Dis. Attorney.* I propose, under the direction of the Court, to prove that prisoner is a man of violent passions and implacable temper.

*Mr. Root.* I object to it.

*Per Curiam.* It cannot be admitted.

PAUL BEARDSLEY, being sworn, testified in substance as follows—He says he was at the raising at Kellogg's—saw prisoner and two deceased start off together—it had rained just as they finished raising—the prisoner and two deceased went on towards the woods—were not intoxicated; Graham had a frock at and during the raising—M'Gillavrae spoke to witness, asked him to go that way; Witness did not. In the morning some of M'Gillavrae's people enquired for Cameron and M'Gillavrae. At about nine o'clock on Sunday morning, July 15, 1813, witness went to Graham's house and made enquiry about them—Graham then told witness they were both dead. Graham went in company with witness to look at the dead bodies—remembers that while there, when he was on the east side of the foot path examining, Graham would request him to let every thing be, when on the other Graham said nothing—the brush heap was on the east side, in which the club was found—Graham would strive to have him be still and not look about; when going back, down to the house, witness said to Graham “I should not like to be in your place, you being the last man seen with them, I should be afraid of being *suspected*”—Graham then, putting his hand on witness's shoulder, replied, “O Lord, Mr. Beardsley,



"I wouldn't begrudge this farm and five hundred dollars more with it, (if I was worth it,) if I was clear of it." Witness then enquired of Graham where he left them—and Graham told witness, that he left them at the corner of Kellogg's clearing, half a mile beyond top of the mountain, quarrelling and getting clubs—that he flattered M-Gillavrae on some distance with him, who finally turned and went back, declaring he would sacrifice Cameron, that Graham further told witness he saw the club swinging by the light of the moon—witness says there was no moon at that hour of the night. At another time the witness heard Graham say, they were getting clubs out of Kellogg's fence—at another time, that they were cutting clubs with an axe; some one observed, that they had no axe with them—then Graham observed he did not know what they were cutting them with. Graham told witness he got home before dark—again said that the deceased were pulling clubs from a brush heap in Kellogg's clearing. The witness saw the clothes at Crocker's, spoken of by the other witnesses; looked at and examined them—saw same marks spoken of by Mr. Peake and the other witnesses; he examined the large spot on the arm of frock particularly, and discovered that it penetrated the shirt sleeve, as well as that of the frock, and that the spots on both corresponded—this was between the shoulder and elbow—it was two or three inches across—it was 26 rods from bodies up to the *sugar camp*—distinctly saw the tracks of a person from the foot path to the camp, and from the camp to the road again—saw a place where a stick had been jammed into the ground—saw where a club had been picked up—he measured the track, and it corresponded with Graham's shoe, which witness also measured while Graham was out of gaol by escape; they were same length—there were the tracks of three persons, and three only, from the top of the mountain to the sugar camp—barefoot track appears, to this place, to have been behind—only two tracks from this place to the place where the track seemed to come into the path again from the sugar camp—after this, the barefoot track appeared sometimes trod into and upon by a shoe track—Mr. Graham's boy brought the axe of Graham to him—Graham spit on the helve and rubbed something off—it had been bloody—the bed, the boy said he laid in, was bloody at Graham's—the blood appeared as if it had been *rubbed off* of something else. One day, three or four weeks before the murder was committed, Graham and witness were in conversation—Graham told witness that Cameron and M-Gillavrae had been over to the Delaware, fishing—that they had drank too much whiskey—said they had been quarrelling; that they had twitted him of stealing Leal's money, but that it wouldn't do for them to twit him of that again, for if they did, he would *sacrifice them*—witness then observed to him, "You would not surely be so bad as to go such a length for words," or *the like*—to which Graham made answer, "*I swear, I would take their hearts' blood if I knew I had got to be hanged the next minute.*" Graham, after the murder, told witness, that after he had got home from raising



he changed his clothes; that they were muddy and that they were put soaking in the water, (from whence they were taken) by his wife, in preparation for washing.

*Cross-Examined by Mr. Root.*

He said that Graham had a frock on at the raising—worked well at the raising—that he heard the prisoner and two deceased say, they came to raising together—that the first suspicion that witness had of Graham's having killed the men, was, that at Graham's he saw a shirt hanging on the fence which had been washed; he found, however, that it was Mr. Hardcastle's shirt, then had no suspicion of Mr. Graham. When Graham put his hand on witness's shoulder, he perceived that it trembled; he then had suspicions again—that he, the witness, did not know the frock that was brought to Crocker's—he said he thought that the stain which he saw on the collar of the frock at Crocker's, (which was understood as by all acknowledged to be Graham's) was *brains*—it was bloody and whitish—that he matched the shirt and frock, and the stain below shoulder on the frock agreed exactly with the one on the shirt directly under.

*In answer to the Court.*

He said it appeared as if it had been attempted to wash the stain out of the frock; that it appeared as if rubbed considerably more there than elsewhere.

*Cross-Examination continued by Mr. Root.*

Witness said, there were several spots on the frock near where the bosom was cut out. The boy's bed stands in the north corner of Graham's house, in the same room with the bed of Graham—he is confident that what he saw on the sheets was blood—that there was more about the middle than the head of the bed—that Patrick Beardsley and some one else were with witness when he measured the track—this was four days after Graham was sent to gaol—that he, the witness, has had some rather harsh words with Graham while in gaol, nothing of consequence.

*In answer to the Court.*

He said he had a quarrel with Graham.

AMASA PARKER, Esq. was next examined as a witness. He said he examined the clothes spoken of—remembered one mark not spoken of by Mr. Yeake, on the fore part of the frock—this spot seemed to have some substance about it, about the size of a drop of water, it surely was bloody—it resembled coagulated blood—it was picked off by some one—some parts of the frock seemed more washed than others, to wit, the collar and wristbands—it seemed as if the large stain had been *much* washed, clean except the stain—Graham at that time admitted the shirt soon, and at length the frock, to be his—at first would not own the frock.

MATTHEW M'CLAUGHRY, under sheriff, being sworn, said, On Sunday afternoon he went to Graham's house, and examined over the whole house, particularly the clothes therein—that he was one of the com-



mittee sent by Mr. Peake—he took the frock and shirt mentioned by the other witnesses out of the kettle; there was a pair of coarse linen trousers in the kettle which the folks said were Graham's brother's—he saw and noticed the stain on the right shoulder of the frock and shirt and on the collar of the frock—he carried the clothes to Crocker's—he asked Graham if they were worn by him the afternoon before, after some hesitation he said they were—noticed the spots and stains, &c. spoken of by the other witnesses—has no doubt but the stains spoken of were the *stains of blood*.

*Cross-Examined by Mr. Root.*

He said the *manner and form* of the stain was like ink spattered on to such cloth, but the *color* was like the stain of blood partly washed out.

JAMES STODDARD, sworn, said, He had a conversation with Graham at witness's father's, about the 20<sup>th</sup> of June, 1813—they were digging cellar—among other things, Graham related that he had seen M'Gillavrae and Cameron near Leal's, fighting—that M'Gillavrae twitted him about stealing Leal's money, and that he, Graham, replied to M'Gillavrae, “this is not the first time that you have thus twitted me,” and then observed, in hearing of witness, that if he or any one else twitted him so again, he would sacrifice him.

Mrs. ELEANOR DAVIE, (late wife of Hugh Cameron deceased,) sworn, said, That Hugh Cameron, who was murdered, was her husband—that she, in the morning on Sunday, sent her little daughter to Mr. M'Gillavrae's to enquire about Cameron and M'Gillavrae—after her return and account given, she hastened immediately to Graham's house, and asked Graham where he left Cameron and M'Gillavrae?—he told witness that he left them at Kellogg's fence, cutting handspikes—Graham's girl came in and said, she had heard that Cameron was dead—witness asked Graham if they had their axes? no, said Graham—she related her having caught Graham in a falsehood, as to the conduct of M'Gillavrae and Cameron at the time of the fishing. Graham shewed witness where deceased were.

Mrs. MARY M'GILLAVRAE sworn, said, that Alexander M'Gillavrae was her husband. Witness went to Graham's; asked Graham where he left Cameron and M'Gillavrae; he said he left them quarrelling in the woods; she asked him if they had struck each other, Graham said “no—each had taken an axe and cut a club,” and said that M'Gillavrae swore, he would sacrifice Cameron if he quarrelled there as he did at Leal's. Witness told Graham, “I'll never forgive you for leaving them as you say you did;” to which Graham replied, “my God, don't reflect on me, I tried my best to get them along but could not.” That Graham told her it rained; that he was unwell: that he left them a mile and a half from his house, the other side of the mountain. Witness solicited Graham to go with her to them; Graham at first declined going; he finally went with all present, viz: Mrs. Crocker, Mrs. M'Gillavrae and William Graham, son of the prisoner. As they were go-



ing along Graham said "Cameron began the quarrel, and M'Gillavrae to be rid of Cameron, *run a race with Graham*; that M'Gillavrae fell down—he, Graham, went on: that M'Gillavrae then told him to wait till he could go and see where Cameron was; that he got tired of waiting for M'Gillavrae and *whistled*—then went on—that this was the last he saw of them: that he heard nothing from them." Witness said she was walking on towards the place with her head down, and when near the dead, she asked Graham how far it was, to where the dead were—to which Graham replied that it was nearly a mile; as they progressed a little farther, Graham's son turned round and ran back; witness exclaimed "O Lord, what have you seen?" Graham then instantly caught hold of her, under her arms, and turned her face from the dead: she however saw Cameron: she tried to go forward, Graham prevented her; said Graham, "the men are dead; you musn't go there or go near till the Coroner comes." She turned again and saw M'Gillavrae too; she was then about thirty feet from Cameron; that Mrs. Crocker insisted, that *some wild beast or creature* had eat up M'Gillavrae's face; that witness got away from Graham; witness asked Graham, "is not that done with axes?" "No," said Graham, "they had no axes with them—it was done with clubs." Didn't you say they were *cutting* handspikes when you left them, with axes? said witness to Graham—"Yes," answered Graham, but they pulled handspikes out of Mr. Kellogg's fence—that prisoner told witness he had rather see one half of the people in Delhi dead than see that sight.

WILLIAM M'KEE, sworn, said, he did not assist any one in examining the track.

*Cross-Examined by Mr. Root.*

He said he was in his own house when Mrs. M'Gillavrae and others went up to where the dead were—Graham said, "William come here, there are two men here—two of Graham's children soon hallooed that two men were dead up in the woods. Graham asked witness not to go near them until the coroner came.

ROBERT COLGATE, being sworn, said, He examined the road or foot path part of the way from Kellogg's over to the turnpike, in company with others; examined the tracks particularly—apparently three tracks going *regularly* on—one barefoot track—no appearance of *running* or scuffle—about three quarters of a mile from Kellogg's there was a footstep across the road; the tracks appeared to be those of men walking deliberately along—the track of the three reached to the *sugar camp*.

AMOS BARNES, sworn, said, Was with M'Colgate, saw three tracks *regularly progressing*, no variations, no stopping. Witness went to the *sap bush*, saw the track across the road, saw the one track from the road into the sap bush, saw a place from whence a handspike had evidently been taken, saw the evidences of its having been jammed into the ground same as those near the deceased—saw and examined the stained clothes.



PATRICK BEARDSLEY, sworn, said, That two deceased were eleven feet apart; he measured the ground from the deceased to the sugar camp was 26 rods, from foot path to boiling place was four rods, same distance from boiling place to where the person again came into the foot path—this examination was a day or two after the inquest—this witness first found the iron wood club, saw the same in the tree top, blood on the leaves where club was found.

MRS. AMELIA KNAPP, sworn, said, Her husband was gaoler when prisoner escaped—his shoes were left in his stockings, his stockings tied together, and thus left in the chimney. The club exhibited was brought to the gaol with Graham, was nearly as much seasoned as it is now, there was then hair on it of different colors.

ROBERT LEAL, Esq. sworn, said, He examined the clothes of prisoner spoken of and discovered the same marks mentioned by Mr. M'Claghry and Mr. Peake—they appeared to be the stains of blood—noticed the small peck on the collar. Prisoner escaped on the eve of the 20th September, 1813, when the stains were upon the clothes, they seemed to have been rubbed much in washing—there appeared some small spatters on the corner of the frock, the stains were a little darker than fresh blood. M'Gillavrae's nose was all jammed in—there was a log by the side of the deceased. He could not have pronounced them dead at the distance of six feet—both of their heads were sunk into the ground—the spot on the collar was about as large as a kernel of grain. The ground under their heads was dry and hard.

JAMES M'ADAMS, sworn, said, That on Sunday morning he asked Graham where Cameron and M'Gillavrae were left by him—that Graham told witness he left them together on the top of the hill, and that he left them because they were quarrelling—that they quarrelled with him, Graham; at another time he heard prisoner say that he left them back of Joseph Kellogg's *girdling*, about 30 rods from Kellogg's house. One day at Leal's store, witness heard prisoner say, that if any one twitted him of having stolen Leal's money he would *be their butcher*, or sacrifice them; witness also heard the same expressions heard by others at a *certain cellar*.

AMOS WALMSLEY, sworn, said, He saw the spots on the frock; he has no doubt they were the stains of blood.

EZRA BROADWELL, sworn, said, That prisoner one day said to witness, "You know I didn't kill these men"—witness replied, "I don't know"—then said prisoner, "You know as well now as you, or any body else, ever will know how they were killed."

ALFRED ROBINSON, sworn, said, He examined the clothes spoken of, that he was one of the committee sent after them; that when shirt was discovered, he found a small substance on it, reddish, apparently clotted blood; he rubbed or brushed it off; it was on the top of one of the wristbands.

*Cross-Examined by Mr. Root.*

Said he left a pair of trowsers in kettle, apparently men's trowsers.



Here the evidence closed on the part of the people.

The counsel for the prisoner did not open any defence to the Jury, but proceeded immediately to calling the witnesses.

#### WITNESSES FOR THE PRISONER.

WM. BLAIR, called again, said, He mentioned no suspicion, &c. at the time, as so being followed by Graham towards brush heap.

JOHN HOLLY, sworn, said, He was at Graham's the same day Graham had been tried for stealing Leal's money and was acquitted, and heard him say something of quarrelling.

*Cross-Examined by Mr. Sherwood.*

Said that he has heard prisoner say, that if any person twitted him of stealing Leal's money he would sacrifice him.

BENJAMIN M. MURDY, sworn, said, Was not at the spot where deceased were found. On Monday he examined the *frock and shirt*; they were stained—does not know whether the stains were blood or not—has seen stains *even darker*, that were not blood.

JAMES G. LEAL, sworn, said, He saw M. Gillavrae and Cameron near Leal's, on the occasion spoken of once by Graham—they scuffled, but in good nature—they throwed each other down—Graham went off first, they afterwards followed—he thought Cameron on that occasion was the worse for liquor.

JAMES MURPHY, sworn, said, M. Gillavrae never told him he had a quarrel with Cameron at Leal's store.

Mrs. BETSEY CROCKER, being called for the people and sworn, said, That the same clothes which were brought there on the Sunday were kept there until Tuesday. they were then taken away by some of the family; Paul Beardsley was there on Monday.

WILLIAM GRAHAM, called by prisoner, said he had the nose bleed on the Saturday night, that his father came home before he went to bed, &c. For the best of reasons the remaining testimony of this boy is not noted. He was ably cross-examined by Mr. Sherwood, and his testimony entirely lost the merit of consistency.

PAUL BEARDSLEY, called again on behalf of the people, said, that William told him that his father, when he first came home. threw himself on the bed of him the said William, that William said he first got up, and that his father appeared something frantic.

Here the testimony, in this almost unexampled cause, finally closed.

Mr. ROOT then addressed the Jury on behalf of the prisoner at the bar. He occupied the floor about forty minutes. It may with the greatest justice be said, notwithstanding the great concourse of spectators, and the consequent struggle for places, that during the pathetic address of Mr. Root, all was silence and attention. He was masterly throughout, but the most so in his very ingenious attempt to convince the Jury, that the *murdered* might have met their fate from some third person, other than Graham. His deductions and comments were inte-



resting and eloquent. The Reporter begs leave here to observe, that when the evidence closed, the day was so far spent, the court house so uncomfortable from the warmth of the day, and himself so much fatigued, that it was impossible for him to keep pace with the rapid flow of the speaker. On examining his minutes of the address of Mr. Root, he found it wanting so much in the *spirit* and *point* of the original, that he determined at once not to trouble the public with so faint an outline of the original.

MR. SHERWOOD then closed on behalf of the people with the following brief, interesting and ingenious speech :

GENTLEMEN,

The novel spectacle of a fellow-being arraigned to answer to one of the highest offences known to our law, has excited much of public curiosity much of public sensibility. You see the remark witnessed in the crowded auditory, who have assembled to hear the awful trial of this day. The court, the counsel and yourselves manifest a weight of responsibility, a solemn sense of duty, rarely if ever so apparent. In this most solemn and impressive of all human trials, the forms of justice have allotted the parts we are to perform. It is yours, with the legal advice of the court, to pronounce the guilt or innocence of the prisoner. It is mine, as the associate of the attorney for the people, to sum up the evidence, and point out the circumstances, upon which the prosecutor relies for the prisoner's conviction. Although I feel the inadequacy of my humble powers, to meet the duty which devolves upon me, I will not shrink from the attempt.

Much more important is your duty, the public eye is upon your decision, the prisoner's fate, his life, is suspended upon your verdict. Let not the consequences, however, to the unfortunate upon whom you are to pass, influence you into error. Remember that public justice has its claims. But if err you must, humanity requires it should be in favor of the prisoner. By the benignity and justice of our laws, he is entitled to a fair and just trial, uninfluenced by extrinsic considerations, unbiased by partialities, unhurt by prejudices; his case with you must stand or fall by the ordeal of this day's legal testimony.

Gentlemen, the crime of murder, charged against the prisoner, is defined to be the taking away the life of a reasonable being, with malice aforethought. The malice may be either express or implied—*express*, as by some open, distinct manifestation of the design to take away life; *implied*, as where the killing happened without a particular design, but in pursuance of some unlawful purpose; here the law applies the general, unlawful design, to the particular act, and thus constitutes the crime.

In this case. I anticipate, the court will charge you, that you require but little nicety of definition—if the prisoner perpetrated the act of killing, he is guilty of the horrid crime with which he is charged; he is not only guilty, but has superadded to the crime the aggravation of ruthless barbarity, without a parallel in the history of the present time.



Before I examine the facts of the case, allow me to caution you against the influence of an erroneous impression, too prevalent, too deep-rooted in the minds of many honest and otherwise intelligent Jurors, that to produce a conviction for a capital offence you must have *positive proof* of the fact. I feel a greater necessity for this remark to you, as the counsel for the prisoner has indulged in a course of ingenious remarks, calculated to enforce the error; and although I cannot suppose the counsel would desire to have you adopt a principle so unsafe and so fallacious, yet I know the ingenuity of argument is sometimes mistaken for deliberate and well founded opinion.

This case is to be decided by the same rules of evidence that govern in every capital case. Writers who treat upon the subject of evidence, divide it into *positive* and *presumptive*—the former is the oath of a witness to a fact within his knowledge, bearing directly upon the question; the latter is the oath of a witness to some incidental circumstance, either immediately or remotely connected with the question—of this presumptive evidence, however, light and trivial circumstances, in capital cases, are rejected, as not being sufficiently safe to rely upon, while strong and violent presumption, as the court will charge you is recognized as good and established evidence. Indeed if we look to our own experience, we know that the human mind is frequently as well satisfied by a coherent combination of circumstances, as any species of testimony whatever. A safe and salutary rule which adapts itself to the familiar understanding of every one of us, in regard to presumptive or circumstantial evidence, is, Do the circumstances proved produce a reasonable belief that the fact charged is true? Can all the circumstances proved reasonably exist, consistent with the untruth of the charge? In the latter case you would acquit, in the former convict.

To establish the prisoner's guilt, of the crime charged, you must find,

1. The death of Cameron and M-Gillavrae.
2. The killing by some third person with the deadly weapon described.

3. That the prisoner perpetrated the deed. Of the first question there is no possible doubt. The second is almost equally clear; although we collect it from no positive testimony, we cannot withhold our belief, that the deceased were killed by some third person, with the weapon mentioned; and let me here observe, that this fact forcibly illustrates the strength of the presumptive evidence. The position of the deceased from each other, and the situation in which they were found, preclude the idea that one could have killed the other; and what renders it perfectly conclusive that some third person did the deed is, the horrid circumstance, that both of their heads were beaten and driven into the earth near half their size; the sharp end of the weapon found comparing with the mark or hole made in the ground in several places, and particularly by the head of M-Gillavrae, establishes its identity; and again, its position in the brush heap indicated that it was



pitched there from the fatal spot, it was covered with blood, with human hair, and with brains. The same had left its mark where it was found, and the hole was half filled with blood.

The great question to be examined is, did the prisoner perpetrate the deed? and before I advert to the affirmative circumstances to shew the prisoner's guilt, I will examine the argument of the opposing counsel, and see if he offers any reasonable excuse for the prisoner's acquittal. [Here Mr. Sherwood minutely attempted the refutation of the argument of prisoner's counsel, in regard to the stains upon the prisoner's clothes, which it was contended were probably produced by a species of red earth common in this part of the country. Mr. S. observed, it was true we had such a species of earth in several places in the county: and of that found at the head of the Delaware, hopes were entertained that it would have been very useful as a paint. But this species of earth was readily distinguishable from our common earth, which was of a dark chocolate color, and in this particular instance, the *mud* through which the timber was drawn, was proved to be the ordinary dark dirt. Had there been any pretext in point of fact for the suggestion, the prisoner would have produced abundant testimony to have proved that such red earth was to be found near the place of Kellogg's raising.]

GENTLEMEN,

In the whole range of inquiry in which the defendant's counsel has indulged, with his usual ability, I regret that I cannot perceive for the prisoner a plausible pretext for his acquittal; not even the glimmering of hope. The fabric which has been reared for his defence, is but the illusion of fancy: it bears not the scrutiny of truth: it crumbles at the touch of reality.

We are now to examine the *circumstances* which *evince* the prisoner's guilt.

And first, the prisoner's *threats*: these, if not evincive of his diabolical design to destroy the deceased, shew a depravity of heart, a cool deliberate wickedness of thought, uncontrolled by a just sense of moral obligation: an obdurate malice unsatiated but by the *heart's blood* of its victim.

To Blair, the prisoner declared, "if any one ever reproached him of stealing Leal's money, he *would sacrifice him*." A few days afterwards, he says the same thing to Stoddart, and applied it to the deceased. To M'Adams, he declares "if any man should twit him of that he would be his butcherer." To Beardsley, he said that Cameron and M'Gillavrae had twitted him of stealing Leal's money; but "it would not do for them to do it again, for he would sacrifice them." And on being cautioned against such violent expression, he replied: I swear I would take their heart's blood if I knew I was to be hanged for it the next moment." With a heart thus depraved, and thoughts thus familiarized with *butchery and blood*, we find the prisoner at Kellogg's, between sun-down and dark with the two deceased. They all



sat out together to return to the turnpike; a distance of two miles on a foot path through the woods, no other person that night travelled that way. The next morning, the prisoner is found apparently unconcerned at home: the two deceased are found upon the road about a quarter of a mile from the prisoner's house, *mangled and dead*. It was natural to look to the prisoner for a correct account of his companions. It was indispensibly necessary for him to give one. A plain consistent relation, always told alike, would have carried with it almost irresistible evidence of its truth, while an incoherent, improbable, contradictory story, would equally convince us of its falsity. Truth is usually the handmaid of innocence; falsity, the attendant of iniquity and crime. Had the prisoner told us an unvarying plain tale, we should have believed him. But his account is all improbable; all contradiction. In the course of the next day, when he could not have forgotten a *single truth*, he gives contradictory relations. At one time, he says he left the deceased in sight of Kellogg's clearing, *cutting clubs*, and quarrelling with each other, and he left them for fear they would quarrel *with him*; saw them no more. On being told they had no axes with them, he said they were *pulling up or breaking clubs*. At another time, he said he left them getting clubs out of Kellogg's fence. At a third time, he said he left them on the top of the mountain, (about equally distant from Kellogg's and the turnpike) one told the other he was not as drunk as the last time they quarrelled. They cut clubs and were going to attack each other; prisoner ran away from them for fear they would kill him. On a fourth occasion, he said "they commenced quarrelling about half a mile from Kellogg's; he flattered M'Gillavrae to run a race with him, and they ran away from Cameron; M'Gillavrae fell down; when he got up declared he would go back and sacrifice Cameron. He went back, prisoner waited awhile, whistled for them, and saw them no more."

Leaving these contradictory and false accounts of the prisoner, we are able to ascertain the truth by the examination of the *tracks* along this foot path from Kellogg's to the fatal spot; the heavy shower of rain which fell, just before they left Kellogg's, obliterated all previous tracks in the path, and left plain and distinct those made by the prisoner and the deceased, on their return, as if marked by the finger of Providence to developé that which otherwise might have been mysterious, "every footstep left its trace behind." The witnesses who examined the tracks prove to you, that the *three tracks* were plain, undeviating, no stopping, no running, no scuffling—one continued regular course of progression, until near the fatal spot. They were able to tell by measuring the tracks, the shoes, seeing which stepped into the other; and other examinations, which of the three went forward, in the middle and behind. The prisoner, with his *large shoe*, was first, M'Gillavrae next, and Cameron, with one bare foot, behind. At the prisoner's own sugar camp, a distance of about 30 rods from the fatal spot, the large track obliqued to the left, going directly to where two



handspikes apparently lay, one still remained, the print of the other compared with the weapon of death. The returning track obliques to the path, falling into it 26 rods from the fatal spot, evidently behind the other two, for it occasionally stepped into the barefoot track. From the position of the bodies of the deceased, and the situation of the wounds, Cameron was first approached from behind, and struck down upon his face—this gave the alarm to M'Gillavray, who turned round and was met by a blow in front, which knocked him down backwards. And now, let me ask you, gentlemen, can there be a rational doubt resting upon your minds, who perpetrated the horrid deed? If there is, other evidences of the prisoner's guilt are not wanting: the deed was done on Saturday evening—early on Sunday morning the prisoner's clothes, which he wore at the raising, were found in the wash kettle—the circumstance of the clothes being in the wash kettle early on Sunday morning, was in itself singular; but the appearance of the shirt and frock, when examined by the jury of inquest, left no doubt on their minds that stains of blood still remained upon the shirt and frock, although evidently there had been attempts to wash them out; and in two instances substances of coagulated blood were distinctly seen and examined.

GENTLEMEN,

I will not detain you further by adverting to minor corroborative circumstances: the evidence is all before you. You will weigh it with sober attention: deliberate upon the circumstances, and I can see no escape from saying, the truth is discovered: that it is but too true that the prisoner whom you have in charge, is guilty; guilty of the enormous crime of **MURDERING TWO FELLOW MORTALS**. Alas! if this sin be upon him, and you have no reasonable doubt of it, your oaths and your consciences point you to your duty.

His Honor Mr. Justice SPENCER immediately arose, and in the most solemn and impressive manner, delivered to the Jury the following truly learned and eloquent CHARGE:

GENTLEMEN OF THE JURY—In addressing you, gentlemen, on this occasion, I feel an unusual agitation. The *life* of a fellow creature is in *our* hands. We are responsible to our country for the manner in which we discharge our respective duties. On the one hand, if we are accessory to the shedding of *innocent* blood, we commit the greatest injustice to a fellow-creature, to our country, to our consciences. But on the other hand, we must not seek to resist the force of evidence, established by the corroborating oaths of a variety of respectable witnesses, and confirmed by the most singular coincidence of concurring circumstances. Should we reject the convictions of truth, we should daringly violate our oaths, and violate too every principle of reason. We are responsible to the prisoner not only, but to the public and to God. Under the most serious impression of the awful duty which has devolved upon us, let us enter upon the discharge of that duty with the most trembling anxiety, to arrive at a just, correct and safe conclusion.



The horrid crime of murder is one of the few crimes which by our laws is punished with death. Our legislature, actuated by mild and merciful motives, have authorised the infliction of but few capital punishments. It is founded in reason, however, as well as immemorial usage, and *sanctified by revelation from Heaven*, that the crime of murder should be punished with *death*. The murderer is cast off as an unsafe member of society, and his life made the forfeit of his crime.

Murder is the unlawful killing of any reasonable creature, with malice prepense. Malice may be either express or implied. To judge from the circumstances attending the taking of the lives of Cameron and M'Gillavrae, the perpetrator must have been actuated by a mind almost unequalled for ferocity, a mind void of all sense of feeling, of all human considerations. If the deceased came to their end by the club produced by the witness, whoever used it must have been a murderer. From the situation too in which the deceased were found, there was a barbarity in mangling, at once horrid and shocking; and such as evinces a most depraved mind, bent upon the most criminal mischief.

That the deceased have been murdered by some *third* person is beyond all doubt. I will not occupy your time in shewing the truth of a fact already beyond dispute. If you ask which of the deceased killed the other? the answer is *neither*. They were both dead, and the heads of both pressed far in the ground. This must have been done by some third person.

From all the facts proved it is apparent, that the deceased made little or no resistance; no weapon of offence or defence was found near or about them, but the fatal club which undoubtedly produced their death. Whoever used that club in taking the lives of the deceased, must have used it on unarmed and unresisting men; and the act of using it, as it was employed in the taking the lives of the deceased, discovered that wicked and abandoned heart and disposition which renders the individual a murderer.

The only point which can admit of the least hesitation is this—Is the prisoner at the bar the person who committed these horrid deeds?

Of the evidence applicable, there are two species.

First—*positive* and *direct* evidence; which is a recital of such facts as actually come to the knowledge of the witness through the medium of his own eye or ear.

The second species is *presumptive* evidence. Of the latter species is the evidence in the case of the prisoner at the bar. Here is no direct and positive testimony of any person having *seen* the murder committed—nor in so capital a case even as the present is, such testimony *indispensible*. The *general rules* of evidence, applicable in other cases, are applicable also in the case of murder. Should we, in cases of crime of the deepest dye, require direct and positive proof, most offences of the greatest enormity would pass unpunished. If the other species of evidence, therefore, excite such a violent presumption in the mind, as to leave no reasonable doubt that the prisoner did the act, mankind would be in constant insecurity unless the offender thus discovered be brought to conviction and consequent punishment.



It is the remark of learned men, that circumstantial evidence, strong and striking, proved by the concurring testimony of a number of witnesses, is equal if not preferable to positive evidence proved by one or even two witnesses. If a person were to swear unequivocally that he saw the prisoner perpetrate the offence, every thing would depend on the verity of the witness. But where several persons concur in relating a connected train of circumstances, probable, corroborating, and all tending directly to establish a fact, it affords greater satisfaction to the mind, than to place it upon the positive declaration of one or two witnesses, though unimpeached. The books furnish us with one case powerfully illustrative of this principle. The case is put of two men being in a room together; one comes out bloody and carrying a bloody sword in his hand: the other is found in the room weltering in his own blood. These circumstances go conclusively to shew that the man who rushed from the room with the bloody sword, is guilty: and a jury, in such a case, would be justified, nay, required to convict. We cannot enter into the hearts of men, but are left to infer motive and intention, and the *fact itself* from all the circumstances. We must judge of events by the circumstances attending them; and deliberate and decide upon the rules of evidence, used by those who have gone before us.

In conformity with these rules, apply the testimony of this important case, and carefully ask yourselves whether in this case, there is that resistless concurrence of presumptive evidence that tells you that the prisoner at the bar, is guilty of the murder of Hugh Cameron and Alexander M'Gillavrae. If so, you must convict the prisoner: if otherwise, you must acquit him.

I do not intend to go through with a minute recapitulation of all the evidence adduced. The counsel for the prisoner, (Mr. Root,) has very ably and ingeniously, in his pathetic appeal to you on behalf of the prisoner, mentioned and particularised it. And the counsel on behalf of the people, (Mr. Sherwood,) has very correctly, ably, and impartially repeated nearly all the evidence before you. You, yourselves, have heard it, as delivered in. You have heard it attentively, and as you have already been detained very long, and must, as well as myself, be exhausted with the length and weight of the trial, I shall only advert to the most pointed, material, and strong facts.

Some facts are perfectly certain. The two deceased persons and the prisoner, went to the raising at Kellogg's, on the 24th July, 1813. And it is equally certain, that these three, and they only, left there in company, to proceed across the mountain, by a foot path leading to Graham's house. These facts are verified by many witnesses, and indeed by the positive acknowledgment of the prisoner himself to several witnesses. It is in evidence, that they started at about eight o'clock; that it was after sunset and nearly dark; that this foot path was quite unfrequented, except by foot passengers, and by them, seldom or never at so late an hour. At all events, that to pass there at night was quite unusual. It is also rendered perfectly certain by the evidence of



several witnesses who have traced that foot path, that the tracks of three persons, and *three persons only*, were distinctly traced and discovered until they arrived at the sugar plantation, and near to the sugar camp or boiling place. The witnesses state, that it had rained severely about sun down on the 24th, and this enabled them to distinctly see the prints of the foot passing after the rain—that one person must have had one shoe off, as the track of the barefoot was clearly traced and observed—that this person must have gone behind—that Cameron was that person; a shoe was lying near him, which had evidently been carried in the hand—one of his feet was bare, and the shoe clean. Thus it is safely and necessarily concluded, that the two deceased and the prisoner went from Kellogg's together, until they arrived at or near the sugar camp—they made no halt, no indirect course, until in one instance a track crossed the road towards the sugar camp; then there were the tracks of but two persons until the same track which seemed, until their arrival at the camp, to have gone before here crossed the road, and turned out, returns to the road again at a small distance from where it first left the foot path, and came in behind the others—then the tracks of three persons are again traced—the club produced, too, so evidently being the one taken from the ground at the sugar camp, and was evidently the fatal weapon with which this abominable murder was committed.

These circumstances combined, shew that the three persons who entered the woods from Kellogg's must, in all probability, have progressed together until their arrival at or near the sugar camp, and thence to the fatal spot.

Now, gentlemen, is it at all *probable*, is it *possible*, that any third person, under the expectation of the deceased persons passing that foot path, secreted himself at that sugar camp and thus waylaid the deceased to kill them? If so, what became of the prisoner at the bar? Where was he while the third person was coming out? Where was Graham while the third person made the fatal attack? The prisoner's innocence depends on the fact, that he had separated from his companions before they were murdered. If he *had not*, he must either have known of their being attacked, or he must himself have attacked them. It is inconceivable that an attack could have been made on them, whilst he was in their company, and he be ignorant of it. His defence is, that he had left them. His account of the places and the circumstances under which he left them, is perfectly contradictory and irreconcilable. The prisoner having left Kellogg's in company with the deceased at such a season, to traverse an unfrequented path, and the tracks having been traced as already stated, it is thrown on the prisoner to give some rational account of the place where, and the time when, he separated from the deceased: and a man in such a situation must give a connected and consistent and unvaried story, in order to be entitled to credence. I shall not enumerate all his irreconcilable statements. At one period he left them cutting clubs with axes near Kellogg's clearing—at another time he left them together on the mountain—again, they had no axes—at another time they were pulling stakes from Kellogg's fence—at another they were getting sticks from a brush heap—and at another time he and M'Gillavrae went on, leaving Cameron about 20 rods behind, and that then M'Gillavrae said he would go back and sacrifice Cameron, and that he actually went back, and the prisoner went on home fearing they would attack him. Indeed, the prisoner has given relations so entirely irreconcilable, as to induce the inevitable conclusion, that he has not told the truth, and that the truth would not be favorable to him. *Truth* delights in uniformity, and it is a very strong badge of guilt, when a man is bound to speak, to find him deviating *materially* in his different accounts and stories of one and the same transaction. The man of truth and conscious of innocence, never need to deviate. But guilt seeks to conceal itself by fabrications, and having no standard by which to go, it is betrayed into inconsistencies, contradictions and falsehoods. This part of the proof deserves and demands the deepest consideration.

Again—there were *stains* found upon some garments of the prisoner, which almost every witness thinks were the *stains of blood*! They are quite confident of this. It appears that great pains had probably been taken to get the stains in some places from the clothes by *washing*. It is urged, that there was a possibility of staining them by *red clay*, or otherwise than by blood. Admit



It. But does the prisoner in the slightest manner attempt to account for them? You must decide whether these *stains* were occasioned by blood from the *unfortunate victims*. Alfred Robinson went to examine the clothes belonging to the prisoner, at the prisoner's house: he says he found the stains spoken of by other witnesses—that there appeared evidently to be a small quantity of clotted blood on the top of one of the wristbands of the shirt of Graham, which he wiped off, and he is certain it was blood. This is a strong fact, used by the attorney for the people to shew, that in the infliction of the murder the blood spattered back, from one of the deceased, on the prisoner. And if *blood was found* upon him, and is unaccounted for by Graham, then there is a very strong presumption against the prisoner arising from it. The axe belonging to prisoner had its helve bloody. I think this circumstance accounted for by the testimony of the son of the prisoner. The boy, however, says his father came not near him while he, the boy, had the nose bleed. It is therefore a solemn enquiry for you, whether the blood does not form an additional circumstance of corroboration of the guilt of the prisoner.

I do not consider the threats in proof as forming a subject of much consequence against the prisoner. I should lay no great stress upon them. Violent threats repeated denote a person of ferocious passions and very strong feelings. Light subjects, however, ought to have no weight with you in the consideration of so important a matter. The same may be said of the declaration made to Beardsley, on a particular occasion, viz. “that he would give his farm and 500 dollars to be clear of it.” I do not consider this as an admission of his having committed the offence; but that from his situation he was strongly impressed with the idea that he would be suspected. It might arise from his strong sense of the *circumstances* against him. The declarations of the prisoner, mentioned by Mr. Broadwell have been used to show, that he was so well informed of the facts of the transaction, that he knew no one ever would know more about it than they did then. I should not rely upon such an expression in such a case as this. I ought to observe, that as to Mr. Beardsley's testimony, I cannot say I discover any zeal other than that which might, on such an occasion, actuate the conduct of every friend to justice. All the witnesses do not exactly agree with him. [Here his honor recited in substance Mr. Beardsley's evidence, and said,] None of the improbable or incoherent items of this account are necessarily imputable to the witness as falsehoods, but *may be* imputed to *Graham's* deviations from the truth.

Gentlemen, much to your credit, you have most patiently heard this cause. I am gratified by that fixed attention you have given to it; I think patience, and unremitting observation, peculiarly necessary for the jury, in a case so extraordinary as the present. It is your *bounden duty* to decide according to law and justice; and it is my duty to illustrate the facts and general principles of law. The prisoner is entitled to an impartial trial. I have afforded you all the elucidations proper for you to receive from me. It is my undeviating practice in a case touching a man's life, to lay all the circumstances before the jury, and leave them to draw the conclusion. *I have done my duty.* The case of the unhappy prisoner is with you. To your charge his fate is committed. You are responsible if you acquit the guilty; and awfully responsible if you err intentionally in the conviction of the innocent. Upon your oaths therefore, decide. Do not let any extraneous circumstances influence your verdict. Be candid, be cautious, be firm in all your deliberations, and render such a verdict as you can justify to your consciences, to your country, and your God.

At half an hour past six o'clock P. M. the Jury retired to a private room, under the care of *two* sworn constables—and, in twenty-five minutes thereafter, returned into court with a verdict of—GUILTY.

The prisoner, during the whole of this trial, preserved the most astonishing presence of mind; he seemed entirely unmoved by the testimony of the witnesses as delivered in, in his presence; and was not apparently agitated in the least by the charge of his honor the Judge. But when the verdict of *Guilty*, was pronounced by the foreman of the jury, he *seemed* disturbed and *perplexed*. At length assuming a determined look, he observed, that he wished to say something to the Court. His honor Judge Spencer informed him, there



would be a more proper occasion thereafter ; but intimated however, that if it were something very material he might be heard. The prisoner then, in a stern and vindictive tone, declared that he knew not how the deceased came to their deaths ; that he was innocent, and that two of the witnesses had that day sworn falsely against him. He was then remanded to prison. Soon after his return to the prison, he evinced the most inveterate malignity, and actually exhorted and commanded his son, *William Graham*, a boy of sixteen, to kill *Paul Beardsley* and *James M. Adams*, who, he said, had testified falsely against him. His whole conduct was characterized by bitterness of reproach, and violence of resentment. On Monday, June 20th 1814, at five o'clock P. M. the prisoner was brought into Court—was asked by the court if he had any thing to say why the sentence of the law should not be pronounced against him—he replied, that he relied upon the mercy of the court. His honor Judge SPENCER, then addressed him, in a style and manner that melted every heart but that of the obdurate prisoner, and pronounced the following

SENTENCE OF DEATH.

“ The sentence of the Court therefore is, that you be taken from hence to the place from which you last came, and that you there remain until the 29th day of July next, and that on that day, between 12 and 2 o'clock, you be hung by the neck until you are dead, and that your body then be delivered over to the Surgeons for dissection. The Lord have mercy upon your soul.”

[James Graham is a native of Ireland—he came to America very young—has lived in various parts of the United States—his situation in life has always been low. He is a man of large family. His wife and family a few days since visited him in prison, and took their leave of him for ever. They have now removed to Walkill.]

*The following chart shews the situation of the places mentioned by the witnesses.*



EXPLANATION.—N North—C Crocker's—G Graham's—D Dead Bodies—S Sugar Camp—B Broadwell's—K Kellogg's.