In Court of Appeals.

EDWARD H. RULLOFF,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE,

DEFENDANTS IN ERROR.

Writ of Error.

BOARDMAN & FINCH,
Att'ys and Counsel for Pl'ff in Error.
MARCUS LYON, District Attorney.
D. S. DICKINSON,
Of Counsel for Defendants in Error.

ITHACA, N. Y.
ITHACA JOURNAL STEAM PRESS.
1858.

In Court of Appeals.

In General Term of the Supreme Court of the State 1
of New York, held in and for the Sixth Judicial Dis-
trict, at the Court House, in Delhi, in the County of
Delaware, on the 7th day of July, 1858. Present,
Justices Gray, Mason, Balcom, and Campbell.

SUPREME COURT.

THE PEOPLE
Agt.
EDWARD H. RULLOFF.

INDICTMENT.

At a Court of Sessions, holden at the Court House in
the town of Ithaca, in and for the County of Tompkins,
on the second day of June, in the year eighteen hund- 2
red and fifty six, before Hon. Samuel P. Wisner, Coun-
ty Judge, and Clinton Bowker and William P. Speed,
Justices of the Peace and members of said Court, in and
for the County of Tompkins:—

Tompkins County, ss: The Jurors of the People of
the State of New York, in and for the body of the Coun-
ty of Tompkins, to-wit: Miles Brown, John L. Cum-
mings, John Harrings, Benton Reed, George W. Dony,
Reuben Harvey, John Beardsley, Asa Fox, Lewis Han- 3
ford, Chandler L. Benson, Jehiel Norton, Abram Van
Ostrand, William Farrington, Asahel Harvey, Lafayette
Cutter, Henry Brewer, Charles M. Starr, N. J. Clark,
Peter Dubois and Joseph Esty, good and lawful men of
said County, then and there being duly sworn and
charged to enquire for the People of the State of New
York, and for the body of the County aforesaid, upon
their oaths, present, that Edward H. Rulloff, late of
the town of Lansing, in said County of Tompkins, 4
heretofore, to-wit: On the 23d day of June, in the year
of our Lord, One thousand eight hundred and forty-five
at the town of Lansing, in the County aforesaid, with

force and arms, in and upon one —— Rulloff, the infant daughter of the said Edward H. Rulloff, whose christian name is to the Jurors unknown, in the peace of God and the People of the State of New York then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Edward H. Rulloff, with a certain knife of the value of
5 six cents, which he, the said Edward H. Rulloff, in his right hand then and there had and held, the said —— Rulloff, infant daughter of said Edward H. Rulloff, in and upon the left side, between the short ribs of her, the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there feloniously, wilfully, and of his malice aforethought, did strike and thrust, giving to the said —— Rulloff, infant daughter of the said Edward H. Rulloff, then and there with the knife afore-
6 said, in and upon the said left side, between the short ribs of her, the said —— Rulloff, infant daughter of said Edward H. Rulloff, one mortal wound of the breadth of three inches, and of the depth of six inches; of which said mortal wound the said —— Rulloff, infant daughter of said Edward H. Rulloff, from the said 23d day of June in the year aforesaid, until the 24th day of the same month of June in the year aforesaid, did languish and languishing did live; on which said
7 24th day of June, in the year aforesaid, at the town aforesaid, in the county aforesaid, of the said mortal wound, said —— Rulloff, infant daughter of the said Edward H. Rulloff, died, and so the jurors aforesaid, upon their oath aforesaid, do say, that the said Edward H. Rulloff, the said —— Rulloff, infant daughter of said Edward H. Rulloff, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the People of the
8 State of New York and their dignity.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that Edward H. Rulloff, late of the Town of Lansing, in said County of Tompkins, here-

tofore, to wit: On the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and forty-five, with force and arms, at the town of Lansing in the county aforesaid, in and upon one —— Rulloff, the infant daughter of said Edward H. Rulloff, whose
christian name is to the jurors unknown, in the peace 9
of God and of the People of the State of New York then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Edward H. Rulloff, with both his hands and feet, the said —— Rulloff, infant daughter of said Edward H. Rulloff, to and against the ground, then and there feloniously, wilfully, and of his malice aforethought, did
cast and throw; and that the said Edward H. Rulloff, 10
with both the hands and feet of him, the said Edward H. Rulloff, then and there, and whilst the said —— Rulloff, infant daughter of said Edward H. Rulloft, was so lying upon the ground, the said —— Rulloff, infant daughter of said Edward H. Rulloff, in and upon the head, stomach, back and sides of her, the said —— Rulloff infant daughter of said Edward H. Rulloff, then
and there feloniously, wilfully, and of his malice afore- 11
thought did strike, beat and kick, giving to the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there, as well by the casting and throwing of her, the said —— Rulloff, infant daughter of said Edward H. Rulloff, to the ground as aforesaid, as also by striking, beating and kicking the said —— Rulloff, infant daughter of said Edward H. Rulloff, in and upon the head,
stomach, back and sides of her, the said —— Rulloff, 12
infant daughter of said Edward H. Rulloff, with both the hands and feet of him, the said Edward H. Rulloff, in manner aforesaid, several mortal bruises in and upon the head, stomach, back and sides of her, the said —— Rulloff, infant daughter of said Edward H. Rulloff, of which said several mortal bruises she, the said —— Rulloff, infant daughter of said Edward H. Rulloff, then
and there instantly died; and so the Jurors aforesaid, 13

upon their oath aforesaid. do say, that the said Edward H. Rulloff, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the People of the State of New York and their dignity.

And the Jurors aforesaid, upon their oaths aforesaid, do further present, that Edward H. Rulloff, late of the Town of Lansing in said County of Tompkins hereto-
14 fore, to-wit: On the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and forty-five, with force and arms, at the Town of Lansing, in the county aforesaid, in and upon —— Rulloff, the infant daughter of said Edward H. Rulloff, whose christian name is to the Jurors unknown, in the peace of God and of the People of the State of New York then and there being, feloniously, wilfully, and of his malice
15 aforethought, did make an assault; and that the said Edward H. Rulloff, a certain silk handkerchief, of the value of one dollar, about the neck of her, the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there feloniously, wilfully, and of his malice aforethought, did fix, tie and fasten; and that the said Edward H. Rulloff, with the silk handkerchief aforesaid, her, the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there feloniously, wilfully, and
16 of his malice aforethought, did choak, suffocate and strangle—of which said choaking, suffocation and strangling she, the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there instantly died; and so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Edward H. Rulloff, the said —— Rulloff, infant daughter of said Edward H. Rulloff, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against
17 the peace of the People of the State of New York and their dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Edward H. Rulloff, late of the

Town of Lansing, in the County of Tompkins, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and of his malice aforethought, wickedly contriving and intending one —— Rulloff, the infant daughter of said Edward H. Rulloff, whose christian name is to the Jurors unknown, with poison, wilfully, feloniously, and of his malice aforethought, to kill and murder, on the twenty-third day of June, in the year of our Lord one thousand eight hundred and forty-five, with force and arms, at the town aforesaid, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, a large quantity of a certain deadly poison called arsenic, to-wit: The quantity of two drachms of the said arsenic did put, mix and mingle into and with a certain quantity of milk, which the said —— Rulloff, infant daughter of said Edward H. Rulloff, was then and there about to drink, (the said Edward H. Rulloff then and there well knowing that the said —— Rulloff, infant daughter of said Edward H. Rulloff, intended and was then about to drink the said milk—and the said Edward H. Rulloff then and there also well knowing the said arsenic, so as aforesaid by him put, mixed and mingled into and with the said milk, to be a deadly poison;) and the said —— Rulloff, infant daughter of said Edward H. Rulloff, afterwards, to-wit: On the day and year aforesaid, at the town aforesaid, in the county aforesaid, did take, drink and swallow down a large quantity, to-wit: Half a pint of the said milk with which the said arsenic was so mixed and mingled by the said Edward H. Rulloff, as aforesaid, (she, the said —— Rulloff, infant daughter of said Edward H. Rulloff, at the time she so took, drank and swallowed down the said milk, not knowing there was any arsenic, or any other poisonous or hurtful ingredient mixed or mingled with the said drink,) by means whereof she, the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there became sick and greatly dis-

tempered in her body; and the said —— Rulloff, infant daughter of said Edward H. Rulloff, of the poison afore-
22 said, so by her taken, drank and swallowed down as aforesaid, and of the sickness occasioned thereby, from the said twenty-third day of June in the year last afore-said, until the twenty-fourth day of the same month in the same year, at the town aforesaid, in the county aforesaid, did languish and languishing did live; on which said twenty-fourth day of June, in the year afore-said, at the town aforesaid, in the county aforesaid, the said —— Rulloff, infant daughter of said Edward H.
23 Rulloff, of the said poison died; and so the Jurors aforesaid, upon their oaths aforesaid, do say, that the said Edward H. Rulloff, the said —— Rulloff, infant daughter of said Edward H. Rulloff, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the People of the State of New York and their dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that Edward H. Rulloff, late of the
24 Town of Lansing, in the County of Tompkins, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the twenty-third day of June, in the year of our Lord one thousand eight hundred and forty-five, with force and arms, at the town aforesaid, in the county aforesaid, in and upon one —— Rulloff, the infant daughter of said Edward H. Rulloff, whose christian name is to the Jurors unknown, in the peace of God and of the People
25 of the State of New York then and there being, feloni-ously, wilfully, and of his malice aforethought, did make an assault; and that the said Edward H. Rulloff, with a certain weapon, to the Jurors aforesaid unknown, of the value of six cents, which he, the said Edward H. Rulloff, in his right hand then and there had and held, the said —— Rulloff, infant daughter of said Edward H. Rulloff, in and upon the left side of the head, then
26 and there feloniously, wilfully, and of his malice afore-

thought, did strike and thrust, giving to the said —— Rulloff, infant daughter of said Edward H. Rulloff, then and there with the weapon aforesaid, in and upon the said left side of the head, one mortal wound, of which said mortal wound the said —— Rulloff, infant daughter of said Edward H. Rulloff, from the said, twenty-third day of June in the year aforesaid, until the twenty-fourth day of the same month, in the year aforesaid, at the town aforesaid, in the county aforesaid; 27
did languish and languishing did live; on which said twenty-fourth day of June, in the year aforesaid, the said —— Rulloff, infant daughter of said Edward H. Rulloff, at the town aforesaid, in the county aforesaid of the said mortal wound died; and so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Edward H. Rulloff, the said —— Rulloff, the infant daughter of said Edward H. Rulloff, whose christian name is to the Jurors unknown, in manner and form 28
aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the People of the State of New York and their dignity.

JOHN A. WILLIAMS, District Attorney.

And afterwards, to-wit: on the 11th day of August, 1856; at a Court of Oyer and Terminer, held in and for said County of Tompkins, at the Court House, in the village of Ithaca, present, W. H. Shankland, Justice, 29
Samuel P. Wisner, County Judge, Clinton Bowker and Wm. P. Speed, associate Justices, the said Edward H. Rulloff was arraigned upon said indictment and pleaded thereto in the words and figures following, to-wit:—

The said defendant, Edward H. Rulloff, says, that he is not guilty of the crime of murder whereof the said defendant is charged in said indictment; and thereupon the said Court proceeded to empannel a jury to try the issue so joined, but by reason that a fair and impartial 30
trial of the said isue could not be had by a jury from the said County of Tompkins, therefore the said defen-

dant sued out of the Supreme Court of the State of New York the People's writ of Certiorari, returnable at a Special term of said Court, at Ithaca, in the County of Tompkins, which said writ was in the words and figures following, to-wit :

The People of the State of New York to our Justice
31 and Judges assigned to hold our Court of Oyer and Terminer in and for our County of Tompkins, and to every of them, Greeting :

We being willing, for certain reasons, that all and singular indictments, records and proceedings whereof Edward H. Rulloff stands indicted before you, be determined before our Supreme Court and not elsewhere, do
32 command you and every one of you that you or one of you do send under your seals or under the seal of one of you, before our said Supreme Court forthwith, at Ithaca, in the County of Tompkins, all and singular the said indictments, records and proceedings, with all things touching the same by whatsoever name the said Edward H. Rulloff is called in the same, together with this writ, that we may further cause to be done therein what of right and according to law we shall see fit to be done.

[L. S.] Witness William H. Shankland, Justice, at
33 Ithaca, August 21, 1856. CHAS. G. DAY, Clerk.

BOARDMAN & FINCH, Defendant's Att'ys.

Allowed, this 21st day of August, 1856.

W. H. SHANKLAND, Justice of Supreme Court.

Whereby the said issue so joined, was removed into the said Supreme Court. Therefore the issue so joined is ordered by the said Supreme Court, in Special Term as aforesaid, to be tried at the Circuit Court appointed to be held at the Court House, in the village of Owego,
34 in and for the County of Tioga, on the 22d day of October next.

And afterwards, to-wit: on the 13th day of January, 1857, before the Justices of the Supreme Court afore-

said, to-wit: Justices Gray, Mason and Balcom, at a term of said Cuurt, held at the Court House, in the village of Binghampton, in the County of Broome, came the parties aforesaid, by their attorneys aforesaid, and the Circuit Judge before whom the said issue was ordered to be tried, to-wit: the Hon. Charles Mason, 35
one of the Justices of the Supreme Court, had sent thither his record, had before him, in these words, to-wit:

"Afterwards to-wit: at the day and place within contained, before the Hon. Charles Mason, the parties within named, the said Edward H. Rulloff, in person, and by attorney, and the People by their attorney, and the jurors of the jury whereof mention is within made, being elected, tried and sworn upon their oaths, do say, that the said defendant is guilty of the felony and mur- 36
der, whereof he stands indicted."

To which trial, proceedings and conviction, the defendant's counsel then and there made and tendered the following bill of exceptions, to-wit:

SUPREME COURT.

THE PEOPLE
Agt.
EDWARD H. RULLOFF.

The indictment in this cause for the murder of the infant daughter of the defendant on the 23d of June, 1845, at Lansing, in the County of Tompkins, was found 37
at the June term of the Court of Sessions, of said County, in 1856; and was sent to the Court of Oyer and Terminer, of said county, for trial. At the August term of said Court, the defendant was arrigned and plead not guilty to the said Indictment. The trial there-
of was moved and commenced when it was found that an impartial jury could not be obtained because previous opinions had been formed by the jurors called, upon the question of the guilt or innocence of the defendant. 38
The cause was then removed into the Supreme Court by certiorari, and by order of the said Court at a Special

Term the place of trial was changed to the County of Tioga.

The cause was brought to trial at a Circuit Court held at the Court House in said county of Tioga, on the 28th day of October, 1856, before the Hon. Charles Mason, one of the Justices of the Supreme Court, and a jury of said County of Tioga.

39 The Counsel for the prosecution in opening the cause to the Court and jury stated in detail the facts and circumstances he expected to prove and should rely upon to establish the guilt of the defendant, and on which the jury would be asked to find the death of the infant daughter, and that she was murdered by the defendant And in answer to an inquiry made by the defendant's counsel, he stated that he did not expect or propose to prove by any direct evidence that the infant daughter
40 was dead or had been murdered, or that her dead body had ever been found or seen by any one; but that from the lapse of time since the child and her mother, the def't's wife, had been last seen on the 23d day of June 1845, and from the other facts and circumstances he had stated in his opening, he should ask the jury to infer and presume and find that the infant daughter was dead, and that she was murdered by the defendant.

Hereupon the counsel for the defendant moved and
41 insisted that the Court should arrest the farther progress of the trial for the want of proof of the *corpus delicti;* that the rule laid down by Lord Hale that "no person should be convicted of murder or man-slaughter unless the fact were proved to be done, or at least the body found dead," is the rule universally acted upon by our courts, and should never be departed from.

His honor the said justice decided that the most judicious disposition of the qustion now raised was to reserve it until the close of the evidence that he might
42 see what would be proved.

The counsel for the prosecution then called and had sworn,

Ephraim Schutt, who testified as follows:

I live in the town of Dryden. I lived there in 1843 and '45. I had a sister by the name of Harriet, who was afterwards Mrs. Rulloff. My father's family lived in that town. First knew defendant in May 1842. He said he came from New Brunswick. Said he was a German. Spent part of the Summer there. He was 43
engaged on the canal at the time. The next winter he taught school. My sisters Jane and Harriet attended his school. The summer following he studied medicine and afterwards practised it. He married my sister Harriet the last day of December, 1843. That marriage was not much opposed by the family. The first winter they spent mostly at my father's.

Did they live happily together ? (Objected to—ob- 44
jection overruled.) Defendant excepted.

There was some difficulty between them, but I never witnessed any I once heard her crying in a room; went into the room; they were all there together. I asked him (Rulloff) why he treated his wife so He made no particular reply. I said to him his conduct was very strange and asked him if he could not conduct himself in a different manner, and his wife was not agreeable, to leave her to us, but otherwise to 45
stay. He finally concluded to stay. This was in the winter following their marriage. Don't know of any other interviews in which there was difficulty.

William H. Schutt, sworn. I am a brother of last witness. I never was present at any difficulties between him and his wife. Some six months after his marriage I talked with defendant. He had left his wife once or twice He said he disliked Dr. Bull and couldn't bear to have him near his wife. Complained that Dr. B. had 46
kissed his wife. Bull was his wife's cousin. This was their first meeting after the marriage. This conversation was on our way to Ithaca. He said he didn't think his wife had any intercourse with Dr. B., but he hated him. At another time he said (the same evening) pretty much the same thing as before. He then said he

thought Dr. Bull and his wife had had intercourse together. Said he thought he should leave her. That
47 evening he thought he would go back to her. Was present when Dr. Bull made his first visit to Mrs. Rulloff. My sister Jane was present. My wife was present. Think Dr. Bull kissed them all around.

Cross examined. I lived at Ithaca. Had lived there from January 1, 1844, with my family. This was my second or third visit after my marriage ; I was married the next day after Rulloff; went to Ithaca three or four days after my marriage. Dr. Bull lived 3 1-2 miles
48 from my father's. He was very intimate and often there; was a single man. Sometimes he was there every week and sometimes not for a month. I have to guess at the time of the kissing. I have no knowledge myself how often Bull had been there before ; the time I saw the kissing was in January, 1844. That winter visited home often. Ithaca is 7 or 8 miles from my father's. Dr. Bull kissed my wife and Rulloff's wife. Didn't kiss my mother or sister Jane. It was towards
49 evening that Dr. Bull came in. Rulloff left that night. Didn't then hear him say what for. He came back the next morning. Can't say that Bull was there when he returned. I left Rulloff there. No difficulty after he returned that day. Saw R. and his wife together.—Can't say what time of day I left ; it was in the afternoon ; my wife went with me. Can't say when I saw defendant next. He was often down to Ithaca that
50 winter. Think at this time he was living in Ithaca; at the time I have been speaking of. He was clerking it a month or two months. While he was a clerk his wife lived with him in Ithaca. In a few days after his marriage moved with his wife to Ithaca. He boarded at Mrs. O'Brien's. I boarded there too. Know of no difficulty at that time. They appeared to be happy. At the time of the kissing Mr. and Mrs. Rulloff were up home on a visit. Don't know how I and my wife went
51 up. Think it was in a sleigh. My wife returned with

me. Can't say that Mr. or Mrs. R. returned with me. This interview of which I have spoken was some six months after the marriage. At that interview we were coming down to Ithaca on horseback. Defendant was then living at my father's. During the six months he was part of the time in a store at Ithaca and part up to Dryden. When he left Ithaca he took his wife to her father's. This was in the fore part of March or February. I continued at Ithaca. He taught school the next 52
fall after his marriage. He worked on the canal before he came to father's. What I mean is that he came up on a boat on the canal with my brother. Afterwards went back on to the boat. Came to my father's in spring of 1842. Can't say how long he worked for my brother. He returned again on the boat and then went to work on my father's farm. I first went to Ithaca in 1835. Since then have lived there most of the time. He taught school some in the fall or winter of 1842; it was 53
a select school. Taught school summer of 1843 six or eight miles from my father's. My sister attended that school the first winter for 4 or 6 months. Think that winter I first heard that Rulloff was attentive to my sister. Think his attentions continued thro'out the summer. It was December following she was married; then between 18 or 20 years of age. We were on our road to Ithaca when Rulloff said he didn't believe there was any improper intercourse; it was in summer about 54
six months after their marriage. Just before he had left my sister to stay away from her. Don't positively relect that Rulloff said so. He remained in Ithaca 2 or 3 days. Boarded at Mrs. O'Briens. She lived in Ithaca. Then he went back to father's. I saw him next morning at my father's. Then he and I came back together to Ithaca. That was the time when he said he didn't believe there had been any improper intercourse between his wife and Dr. Bull. Before this interview 55
he said he thought there had been illicit intercourse between his wife and Dr. Bull. Can't tell where nor

when this interview was. He expressed himself that there was an intimacy. Rulloff began to keep house in the fall of 1844 in Lansing and so continued to next June, near Mr. Robertson's. I was there at the house once. They were living pleasantly. Saw them often down to Ithaca together. Think once they stayed all
56 night. I thought he was a good provider for his family.

Re-direct. Once R. and his wife came to my house with his child, at Ithaca. R. sat at the window looking out and took up the child and told Harriet to go with him, he didn't want her to meet Dr. Bull. He sat the child down. I then said I was tired of hearing about these troubles and if he couldn't omit the subject I didn't want him to come. My child died 3d June, 1845,
57 and my wife 5th.

Re-Cross-examied. Bull came to my house the day Rulloff was there. He didn't see Rulloff and his wife at all. Defendant was in the parlor when he took up the child.

Jane Schutt sworn. Am a sister of the late Mrs. Rulloff. Lived at home at the time of her marriage. Not long after the marriage they had a difficulty. Dr. Bull came to the house on an errand and Mr. Rulloff left.
58 I didn't see any trouble except that R. left. Bull came for a wheel-barrow. Rulloff stayed away till the next day. Didn't hear R. then say anything to his wife, but have heard him say he wished her never to see and speak with Bull. They had frequent difficulties about Dr. Bull; can't mention times. Don't know of any other cause of difficulty. Once in January or February after the marriage my sister was pounding pepper, and didn't pound it fine enough to suit him. He proposed
59 to do it for her; she poured it back again, and he tried to get the pestle, and she said she would pound it; he snatched the pestle and hit her on the forehead; she carried the mark for some days. Rulloff left her once or twice while she was at my father's. Shortly after their marriage they went to Ithaca. After that re-

turned and were again at my father's—then went to Lansing. Part of the time for 2 or 3 months they roomed at a widow's near father's. When they first went to Lansing lived in Mr. Bright's house. In April, 60
1845, moved to the one near Robertson's. Went to the widow's in the summer.

Cross-examined. I went to Rulloff's school. I am older than Mrs. Rulloff. My sister was 20 when married. Didn't see Rulloff leave the house when Bull came for the wheel-barrow; did not see him immediately on his return. I don't think the pepper was a playful matter; didn't hear any angry words at the time. Can't say what he said except that the pepper 61
wasn't pounded fine enough. He drew the pestle from her and struck her; it was a marble pestle; I think it was a hard blow; it knocked her back several steps. He made some apologies; he said he didn't intend to strike her so hard; he appeared shocked and surprised that he had hit her so hard. She insisted that he did it on purpose. I was at their house at the widow's and in Lansing. He provided tolerable; made her some presents; lived happily at times—at times not. Once 62
at my father's house he began to pack up things to leave her; took up her wedding dress and said he wouldn't leave it, for in three weeks she would have it on and be with Dr. Bull. He went away; took nothing with him. Very soon my father turned him away out of doors.—Don't think Rulloff was ever in my father's house again. In a few days his wife went with him; he met her; went to the widow's, stayed two or three months.—They set their own table. From there they went to 63
Lansing; I was there; they kept house there. Was there the last of April or first of May; it was two weeks or less after her child was born; it was born April 12th or 13th. Stayed there about two weeks.

Hannah Schutt, sworn. Am mother of Mrs. Rulloff; she was married on Sunday, and they went the same day to William's wedding. Remained a month or so

at Ithaca, then came back. I saw that she was unhap-
64 py. Heard no conversation between them that I can relate. William's wife died on the 5th and his child on the 3d. On the 4th June when Rulloff was about leaving, he said that if William's wife and child died, he might thank himself for it, and we were little aware of the judgments that were coming on our family. Rulloff and his wife came to our house in May, '45, stayed about three weeks; went back to Lansing June 16. A few days after they came home, William came; said his
65 wife was sick and wanted him to visit her. The next day Rulloff wanted me to go and take care of her; said he supposed I felt anxious for her to get well. Then Rulloff said William had misused him, and it was wholly indifferent to him whether she got well—that William had misused him about Dr. Bull, and that thing would yet mount up to the shedding of blood. On the way to William's, he said it was strange that I had raised so many children without losing any, but my gray
66 hairs would yet go down in sorrow to the grave. He said William's wife and child have gone. Who will go next? He said then Harriet and her babe would go next. Tbis was the 5th of June, 1845. Said William had misused him a short time before he was called to prescribe for the wife.

Cross-examined. William's child was three months old or more when it died. Dr. Bonney had attended her for Rullaff. The child was taken with convulsions
67 Rulloff was called to William's wife who was sick first She went into decline and had a cough. She was sick about two weeks. She had been usually smart, but took cold. She never recovered her health after her child was born; was imprudent in going out too soon. I went to William's Saturday; his wife died Thursday. I I was at home when Rulloff was tried before. Was not then sworn; didn't go to Court at all. Don't know why. I knw of the trial. I informed the family of this con-
68 versation shortly after it occurred. Can't say that I

have told anybody but my family. I have told it to Dr. Bull's mother. Can't say when. I told my family of it before the other trial.

Harriet Ackerman, sworn. Knew Mr. and Mrs. Rulloff. Boarded at Mrs. O'Brien's while they were there. It was the summer after their marriage. They had 69
some difficulty about Williams going to Jefferson and not getting home in time. He wanted Mary Schutt to go home 9 or 10 miles a-foot. She was 11 years old. Mrs. Rulloff said she shouln't. After dinner they went up stairs; I heard a noise, went up. Mrs. Rulloff stood by the foot of the bed with a pillow before her mouth, and he had a phial in his hand. He said the d—n bitch was going to poison herself. He wasn't near her. She said, O, Edward, ain't you ashamed of yourself! Mrs. Rulloff asked me why I didn't go to my shop. I went 70
down stairs and started to go; went back into the room; then went out again and met Mrs. O'Brien and others going up. They had some words. He wasn't trying to do anything. I heard something like a blow. At this time Mrs. Rulloff put her hand on his head and said, you're mine forever, dear Edward, whether you live with me or not. He threw the phial out of the window. That night he took them home.

Cross-examined. She said she didn't want me to hear 71
the difficulty. Was not sworn on the other trial. Had mentioned this before. I saw the phial thrown out of the window, and the hand placed on the head. Saw nothing else. I boarded with Mrs. O'Brien 6 months. Rulloff got a horse and carriage and took them away. They never came back there again. I am now 29 years old. I was then tailoring. I lived at the time of the trial 7 miles from Mrs. O'Brien's. I had gone home before the last trial. After that Mr. and Mrs. R. lived 72
together at Schutt's and in Lansing. Mrs. Rulloff wasn't hurt then that I know of. No personal violence was used that I saw. At times they seemed to live very happy—he did every thing he could for her. Was at Ithaca last August.

Jane O'Brien, sworn. I kept the boarding house spoken of. Mr. and Mrs. R. were with me off and on. When they first got back from Jefferson it seems that
73 the minister kissed both the brides. He (R.) said if he was a woman he would murder a minister before he would permit him to kiss her. Said he didn't believe in such habits. Afterwards they went to a shilling party and the minister kissed his wife again. This was about a week after. He was very angry; said he would never take her any where again; she went without a meal for two days. About three weeks after the marriage Dr. Bull called—kissed Mrs. Schutt and Mrs. Rulloff and Mr.
74 Schutt. Rulloff got up aud left the table. He came down stairs and went away. He didn't come back to dinner. Bull had then gone. Rulloff came back in a little while and went up stairs; then came down; then we—William's wife and I—went up and found her sobbing. The last of April or 1st of May, William went to Jefferson and stayed longer than Rulloff wished.—the latter was angry. R. was determined that the child should go home on foot and pushed it towards the
75 stairs. Mrs. R. followed to the stairs. I heard something like a blow. As I went up I saw her and she said O, Jane, come up quick! Mrs. R. said Edward is going to make me take poison and take it himself. They were clinched together. He had the bottle in his hand and I and she tried to take it away. I took hold of her. He said by the living God this poison will kill both of us in five minutes and that would put an end to their troubles. He saw they were getting the better of him
76 and he threw it out of the window. Then they got over the excitement and he began to twit her about Bull and she dropped on her knees and said, O, Edward, I am innocent as an unborn child. He struck her in the face and said get away, G—d D—n you; you know better than to come near me when I am angry as I am now.

The blow knocked her over; she looked very red in

the face. He then told her she could go and live with
Dr. Bull and seek all the pleasure she wished to, for he 77
didn't want to live with her any more. He charged
her with sexual improprieties. His language was pret-
ty broad. That was about all that was said. I advised
him to go away and leave her. Rulloff said that before
he would leave her to another he would serve her as
Clark did his wife. Clark murdered his wife. Said
Clark was a gentleman, and he would chop her as fine
as mince meat. That night he carried them back.—
Two or three days afterwards he said he was going af- 78
ter his wife's clothes, that no other man should have
them; he didn't get them. He came in about 12 at
night and sat down with a letter from William Schutt
in his hand, and said he sometimes felt like destroying
the whole family and then being hung like an honest
man as Clark was. Clark was hung some 26 years ago.

Cross-examined. Lived in Ithaca. Am not a wid-
ow; my husband now lives there. I am a cousin of the
Schutt children. I was sworn on the former trial.— 79
Didn't tell all of this story before. The part I told be-
fore was the difficulty about the girl, the sister, at my
house; that was about all. Was examined about five
minutes. They told me I needn't tell all then—that
was before the trial. I met Mrs. Ackerman as I went
up stairs. She turned and followed me up. Was up
there by the time I got there. Some of the time they
lived very quietly; he was clerk in Hale's store. After
that first difficulty she never appeared as cheerful as 80
usual. Used to go home together frequently. These
were all the difficulties I saw between them. The one
occasion as to the sister was all I mentioned before.

Garrett Van Pelt sworn. I knew Rulloff and his wife
and Dr. Bull. Think in June or July, 1844, had a con-
versation with Rulloff. He told me he saw Dr. Bull
and his wife at the mill; this was before his marriage
or after, as he said, and I can't now say which. He
said he heard them talking together; that Bull said, 81

Harriet you have been seduced, and I think you might be again ; that she turned it off with a laugh and didn't appear to resent it at all. I told him I had always known Harriet and thought her discreet. At another time Rulloff said, Gerritt don't you see her life is in my hands ?

Cross-examined. The first conversation was in Dryden, near Mr. Schutt's. The mill was close to Schutt's house. "Seduced" was not exactly the word he used.
82 I can't recollect whether he said they were married at the time I spoke of or not.

Thomas Robertson, sworn. Lived in Lansing in 1845, and live there now. Knew defendant and family.—Live on the middle road 5 miles north from Ithaca. For a few weeks he and I lived near each other, a scant mile and a half from the lake. His house was on the corner opposite mine. I was on the west side of the road ; defendant on the east side, but the width of the
83 road north. A part of the time they, as was said, were at Mrs. Rulloff's father's. His family consisted of a wife and female child. In June, '44 or 5, Rulloff called on me for a horse and wagon, between 10 and 11 o'clock. He wanted a wagon to carry a chest of his uncle's to Mottville. Think but am not certain that he named his uncle as Boyce. Mottville is 8 or 10 miles from my place. I let him have the horse and wagon but reluctantly, bəcause it was an extreme hot day.
84 He came for the horse a few minutes after twelve. He took dinner with us. Just after dinner my son and he got the horse and went to his, Rulloff's door. I saw them there and went over, and just as I got there defendant was pushing a chest twards the door, and took hold of it to put it in the wagon. I said shall I help you load it? He said if you please, sir. I did it, and he went in the house leaving the door about 1-3 open. I moved the horse across the street into the shade.
85 Subsequently he drove off. The end of the chest was heavier than if filled with ordinary clothing. My end

weighed about 60 or 70 pounds. A part of this building had been previously used for a store—the windows had tight shutters. They were sometimes shut and sometimes open. The south windows were closed; and one-half of one towards me was open; am not positive about this. He went directly south on the road to Mottville. That road did not communicate with the lake except by other cross-roads that he could have taken. 86
There are woods upon these roads going to the lake. After I hitched the horse R. came out with a flour sack or pillow case about 1-3 full and put it into the wagon. Have not seen the family since. He brought the horse and wagon back about 12 the next day. The horse didn't seem to have been driven--wasn't sweaty; it was as hot a day as the one previous. He took dinner with us that day. At 3 or 4 P. M. I saw Mr. Rulloff going towards Mottville or Ithaca with a bundle in his hand. 87
Bundle was tied up in a reddish shawl or handkerchief.

Cross-examined. Think when I came back I noticed the horse—not near--nothing that surprised me. We shoved the chest over the side of the wagon. I lifted with one hand, the wagon was near the shop. The chest was shoved into the wagon without anybody getting in. The south shutters were sometimes closed to keep the sun out, when the family were at home. The chest was about as heavy as if stowed with books. He had a li- 88
brary; box wouldn't have held all; afterwards some, most of them were gone.

Elizabeth Robertson, Am wife of last witness. Saw Mrs. Rulloff last, June, 24, day before he got the horse and wagon. She took some soap home with her and said she would wait till the next day before she washed. This was about 9 in the morning. She was at my house that P M., had her child with her. Have not seen her since. The shutters that day that he took away the 89
chest, were closed; continued so till he went away in the P. M. They were all shut till he started to go away, and then he opened one. I saw they were shut in the

morning, and spoke of it. This was unusual. He came to our house between 10 or 11, and asked for a horse and wagon to go after his wife. Said his uncle came there the last night and left a chest there to make room in his wagon for his (R's) wife, and took the wife to
90 Henry Snyder's. He, Snyder, was not an uncle; lives in Dryden 3 miles off. He wanted to take the chest to Mottville. I referred him to my husband. R. then went to his house. Had seen the chest he took away before. It belonged in the family; had been there ever since they kept house. Defendant's child was a daughter about two months old. The morning when Mrs. R. came for soap, she had a calico dress on; dark; sleeves torn off above the elbow. Noticed a ring on her finger
91 that afternoon that I had never seen before. It was a valuable ring with a sett in it. R. took dinner with us both days. Mrs. R. usually wore a large woolen shawl, white and black, small check, when she travelled; saw R. the next day when he was going south; had this same shawl tied full and on his back; was going south. I asked where his wife was. He said she'd gone between the lakes. I asked him when he was agoing to bring his wife back. He said in 3 or 4 weeks—maybe never—
92 Have seen that callico washing dress since; went in the house with the family of Schutts 3 or 4 weeks afterwards; went with others. I saw that wash-dress lying at the foot of the bed on the floor. It lay on the floor in a heap. Saw some shoes and stockings. Know they were Mrs. Rulloff's that she had worn the day before. They were before the bed on the floor. Saw a skirt in another room hung up. Part of the bed was on a chair; bed was not made. Saw her travelling basket there,
93 which she carried when she travelled; she had but one. Saw a small pair of child's socks in the basket. Saw the dirty clothes in the wash room. The soap had been emptied out of the tin pail into a wooden pail. Some of the table dishes were on the table.

Cross-examined. Had known them from October till

March. They then lived in Bright's house 1-2 mile off.
Mr. and Mrs. R. were always very kind to each other
when I saw them. They had lived opposite our house
two or three months. Moved there in July; couldn't 94
say how the shutters were when they came there; they
never shut the windows when they went away; they
wan't shut very often. Didn't mention about the win-
dows when sworn before. Did speak of the shawl then;
recollect that I did. There are two rooms; a bed room
in the house, also a clothes-press; the kitchen was the
largest room, and bed was there. The wash room was
back of the house. Mrs. Rulloff was then in good
health. In the afternoon when she called she had not 95
the washing dress on; she was dressed up. She wore
several dresses at different times. Before she went
home she said Edward was away, and she shouldn't
wash till he came back to carry water. The first day
he said his wife had gone to Snyder's. I have forgot-
ten how I testified as to the second conversation on the
former trial Can't say what day of the week it was
that she borrowed soap. It was not Monday, it was
Tuesday or Wednesday. The night of the day she 96
came for soap, I heard a double lumber wagon turn
around to Mr. Rulloff's house, and heard it start away
again in 15 or 20 minutes. It was between 8 or 9 o'-
clock; it was between 10 or 11 o'clock; it went south.
Can't say who was in it or how many. Remember to
have heard Rulloff's door shut after the wagon left;
closed my door at the same time. Can't recollect that
the wagon went east. Haven't conversed with any one
about the way the wagon went. Have heard that Dr. 97
Burdick drove that way within a year. It was a dark
night; don't know whether it was moonlight. The wag-
on stood hitched on the east road between Rulloff's
and Field's. Heard it turn around; can't say which
way, south or east; it drove off. Mrs. Rulloff that af-
ternoon stayed to tea. Didn't see Rulloff when he re-
turned with the wagon. We dined about 12; can't say

how soon after he went away. The ring wasn't taken
98 off at our house. I spoke of it as she was wiping dishes. It was all of six weeks after Mrs. Rulloff's disappearance that we went there. The blinds were on the west and south; 3 or 4 windows had blinds. There were no east nor north windows. Noticed the blinds were closed in the morning of the day when he went off with the chest. One blind was open when he came with the wagon. This was the first time I had seen
99 the blinds closed.

Re-direct. This wagon came close to Rulloff's. Field lived a short distance off.

Re-examined. This shawl was a winter shawl. Don't know that she had another. In travelling in the night in June, she would usually have worn it.

Dr. John F. Burdick, sworn. Reside in Lansing; I am a physician; practice there. I visited a patient at Mr. Field's about the time of the disappearance of Mrs.
100 Rulloff. I visited her in the night with a horse and sulkey or Buggy. Fields is about 3 rods from Rulloff's. I came between 8 or 9 o'clock, and hitched my horse opposite the east end of Rulloff's house, and went to Field's house and stayed till about 11 o'clock. I went and unhitched my horse and drove up east towards Mrs. Fields to talk with her, and then turned around and went west to the middle roads, and then drove south home. I heard Robertson's and Rulloff's doors close
101 as I was turning my horse to go home.

Cross-examined. I was at Fields 2 or 3 hours. It was on the 23d of June that I was there. Think it was on Monday, the night, there were some squaws in the neighborhood. I conversed with Mrs. Field's before I turned around, and when I turned around I went directly home.

Olive Robertson, sworn. I am a daughter of Thomas Robertson. I remember the time the squaws were there;
102 I was at home that night; Rulloff was at our house. He told me to go to his house, that his wife might be

afraid if she knew that Indians were there. I stayed till 9 o'clock and went home. Mrs. Rulloff was holding her child in her lap when I went away. Nobody else was there when I was first there till defendant came with the Indians with him ; Indians stayed a short time. While they were there, defendant showed Mrs. Rulloff and myself the jewelry and moccasins the Indians had with them. Defendant then gave the Indians something 103
I thought was money. After the Indians left, I think I saw him stirring something in a tea cup; think he sayed it was composition tea ; he was stirring it with a spoon in a tea cup. Never saw Mrs. Rulloff or child since.

Cross-examined. Defendant told me to go to his house, that Mrs. Rulloff would be afraid alone, if she knew Indians were in the neighborhood. There were two of them ; no children ; wore blankets and head- 104
dresses.

John W. Gibbs, sworn. I live in Lansing. I knew defendant in '45. About the time his wife disappeared, defendant stopped as he was going north with Robertson's horse and wagon and a chest in it. It was about 12 o'clock. He drove at a moderate gait as usual. I live about 80 rods south of Rrbertson's. I saw Rulloff again between 2 and 3 P. M ; he was on foot some 10 or 15 rods from me. He said good bye, pap ; that he 105
and his wife was going to visit between the lakes 5 or 6 weeks, and would visit me when he came back. He had a bundle, and was going west towards Ithaca.

Cross-examined. Defendant always treated his wife friendly so far as we knew ; we visited back and forth.

Elijah Labar, sworn. I reside in Ithaca, 1 1-2 to 2 miles south of Robertson's. Knew defendant in '45. Remember the time of his wife's disappearance. Saw him pass my house with Robertson's horse and wagon 106
about 2 o'clock P M. ; was a chest in the wagon. He was alone ; he was going south. The road led to Mottville and Varna.

Newton Robertson, sworn. I am son of Thomas Robertson. Defendant had father's horse and wagon. I steadied one end of the chest in the wagon when it was loaded. Defendant and father had hold of the chest. Rulloff returned next day with a chest; I didn't help
107 lift chest out or lift it after it was out. I think it was the same chest that went away. He got back some time in the forenoon. I believe Rulloff took it out himself without difficulty; it did not seem heavy.

Cross-examined. I looked at the chest and thought it was the same one. I did not examine it to see if it was the same or another chest. I saw Rulloff take it out of the wagon in front of his house before the horse was taken from wagon.

108 *Henry Snyder*, sworn. I live in Dryden, 3 to 4 miles from Robertson's. I am not related to the Schutts; my son is; no other Snyder is related to them. The family usually call me uncle Henry. I did not carry, in '45, Mrs. Rulloff to my house; she was not at my house in June or July, '45. Don't know about her going to Mottville or between the lakes. I never left a chest at Rulloff's or anywhere else.

Cross-examined. I did not see Mr. or Mrs. Rulloff
109 alone that time. There is no other Henry Snyder in the neighborhood. I have 5 or 6 brothers; 6 sons.

Emory Boyce, sworn. I live in Caroline. Mottville is about 1 mile west of my house. My wife and Mrs. Rulloff are cousins; visited together before her marriage. Mrs. Rulloff was not at my house in June or July, 1845, nor was defendant. Defendant and wife were at my house in '44. No chest was left at my house in 1845 by Mr. Rulloff or any other one; know nothing
110 about any chest.

Jane Schutt, re-called. About the time of my sister's disappearance, defendant was at Ithaca the day after the Indians were there, 24th of June. It was before noon; don't know how he came. He said he and Harriet were going away out between the lakes; that a

family visiting in Lansing had advised him to go-that he thought he should go and stay 5 or 6 weeks, and might return. He said he was hungry; would not wait for me to get him something to eat, but went down to the cel- 111
lar and eat ravenously, taking his food into his hands. I understood his wife was at home then. I gave him some of William's babe clothing; he first objected to taking it, but finally did so. He stayed 1-2 an hour; said he was going back home. Saw him again the same day in the afternoon, near 5 o'clock. I said, I thought you were gone tobetween the lakes. He said the family with whom he was going would not go till next day, and he came to have us tell uncle William Schutt, at 112
Mottville, that he could not go and deliver a lecture up there. He stayed 2 hours; said he was going with that family on the morrow. Mrs. Rulloff had a ring with a sett in it; she had had it several years. After tea he said, don't my face look red? I said it did. He said he had walked 5 miles very fast, and it made his face red. He then read the Mysteries of Paris and commenced weeping; said he never could read that part of the book without crying. After that he took out the 113
ring from his pocket and asked William if he remembered it. William said he did, he gave it to his sister years ago. Defendant said, don't you want it? William said no, give it back to your wife. Defendant said his wife gave it to him while at her fathers, a number of weeks before, and he had carried it since. A box is shown witness, which she says defendant made at her father's house; and witness recognized a bead work box, wrought collar, belt, wristletts, as articles that belonged 114
to Mrs. Rulloff; recognizes pieces of silk as the same as her wedding dress, also the hose she thinks, but not the elastics, cotton hose worked with silk, also a card engraved "Edward H. Rulloff." I went to the house after the disappearance; saw some articles I recognized, a delaine dress, calico wash-dress, quilted skirt, shoes and stockings; cant say where the skirt was; think there were elastics with shoes and stockings.

115 Cross-examined. I was examined 11 years ago. I was then examined mostly about the striking; think I did not testify about the conversation at William's on 24th June I had not kept those facts secret; have told them to William; he was sworn on the other trail. I think I did not swear about the ring; think brother William did. I recollect most distinctly the piece of wedding gown, the wrought collar and wristletts.

William H, Schutt, sworn. I remember Rulloff at my
116 house the day after the disappearance; I saw him at tea. He spoke of his face burning, asked if it didn't look red, said he had walked some ways. After tea he took the ring out of the vest pocket; he asked if I recognized the ring. I said it was one that I gave his wife several years ago. He said, don't you want to take it back? I said no, give it back to your wife. He put the ring back, said he had carrid it since his last visit at my father's. My sister usually wore that ring. He
117 said he was going between the lakes next morning; should take his wife along; that he had some prospect of getting in business. He stayed till after tea and went down to the store with me, and after a little he went out—returned shortly after and got a rocking-chair that belonged to him. Saw him again about 9 o'clock that night at Dr. Stone's office, bringing a chest out or pulling it towards the door. He had studied at Dr. Stone's. I don't know what he was going to do
118 with it. I next saw him about 6 weeks after. I have never seen his wife since. Six weeks after he came into Hale's store in Ithaca. He said he had come from between the lakes, near Geneva. I asked if his wife was there. He said she was; no place named. I asked him up to my lodging room, and asked him if he had heard of a report there was about his murdering his wife and child. He said he had not. He seemed to be somewhat surprised that they should think any such thing.
119 He asked if it would be prudent for him to go out in the street. While he was eating, he said his wife was

in Pennsylvana, near Erie, in about 2 hours ride of my brothers there; that he had not been to my brothers; hadn't had time. I said I thought it strange that he got her off so far, as she said she would not go far from home. He said he got her on the rail road, and she not being used to travelling, was going much faster than she supposed she was. Didn't say with whom she lived. He stayed in the room with me that night. His eyes 120
were sore, I wrapped them up in cloths. He appeared restless during the night. I asked him what troubled him. He said it troubled him to think that the people had that opinion of him that he would murder his wife and child. I told him to be easy and I would explain it. The next day in P. M., he left the store to go to my father's. In the course of a week he came back to the store; he remained from before noon till evening, when he left. Henry and Jane came down with him. Rul- 121
loff said he would not give any information about his wife. We wanted him to stay till we could get a letter from her. He said she was in Ohio, in Madison; didn't say who she was with. After some conversation he said he would remain and write to her. He went to my house and wrote the letter. After the letter was finished, Ephraim came down to the store with him. He had written a letter to his wife, and a letter to De-
puy, directing him to get the letter to his wife. It was 122
directed to Madison, Lake county, Ohio. He agreed to remain for an answer. He left that evening. Chest at Dr. Stone's was a dark colored chest. Defendant was gone several days, when he came back with my brother Ephraim, under arrest. After he was in jail I saw him; he said his wife was living and well provided for; didn't say where she was.

Cross-examined. Defendant took tea with me and
took the chest from Dr. Stone's on the same day. That 123
was the only day I saw him that week. I supposed generally defendant and wife lived happily. He provided well for his family, and often carried presents

to her, at one time oranges. I and my wife boarded with them at Mrs. O'Brian's—afterwards seperated, but visited together. I have not seen or heard anything from my sister or her child since June 18, '45; don't
124 know whether they are living or dead.

Jane Schutt re-called. When Rulloff came back at the end of the six weeks, he said his wife was at Madison, Lake Co., Ohio. I saw him write the letter to her. I saw my brother take the letter. There were four gentlemen chosen who labored hard one afternoon to get Rulloff to tell where his wife and child were. The tenor of his letter was to have her write that she was alive. He read the letter to us in the evening. Eph-
125 riam took it. Then Rulloff asked me to go after a drink of water. As I went down, I saw a bundle on the bureau, when I came up I missed it. I kept my eye on him. He walked back and forth for a while as if he wanted to get rid of me, then went on to the front stoop, and then went off suddenly. The bundle was missing. I sent word to the store that he had left.

Milton Ostrander, sworn. I live in Ithaca; was employed in Babcock's livery stable in 1845. Rulloff got
126 a horse and wagon of us on the evening of June, 25. Got a lumber box wagon. Got it about dark. Said he wanted to go 3 or 4 miles. He had Dilworth's wagon.

Eber Babcock, sworn. I am one of the owners of this livery stable. Rulloff returned the horse and wagon about 3 A. M. The date on the book was June 26th.—The wagon belonged to one Dilworth.

Edmund H. Watkins, sworn. In 1845 I lived at Itha-
ca; was a stage agent. I knew Rulloff by sight. A
127 man took the stage for Geneva; entered his name as John Doe. This was defendant. He had two chests, or a chest and a trunk chest; wasn't much difference in their size. The chest was brown. The other I should think was put together for the occasion. First saw them in the stage office in the Clinton House.

Cross-examined. This was in the morning, about 7

o'clock, of the 26th June. I was a little surprised at the name. By information I knew him. I did not know him personally. Didn't see him again till the trial in 1846. 128

Harrison Robinson, sworn. I lived in Trumansburg in June, 1845. Went out on the stage only once that year. Rulloff went out with two chests as baggage. He gave his name to the proprietor as John Doe. He went on through Trumansburg.

Cross-examined. The chests were two painted chests, about the same size. Rulloff said they contained books.

John F. Burdick, re-called. Two or three weeks after Rulloff left, I went into the house after some books he had borrowed of me Fields and I went in; I didn't 129 find my books; I got my books afterwards. Saw some dirty clothes in the wash room. Saw a skirt at the foot of the bed lying in a circle, also stockings, shoes, elastics—some dishes on the table unwashed. Noticed a stove, a line with some diapers—on the stove a tin wash-dish. One or two diapers lay near the door. Saw the wash-tub. Three 130 or four weeks after I went in with 40 or 50 men, and found the things about the same as at first. Think the Scutts were there. Sheriff Porter took the lead. The bed was in disorder. In the bedroom was a bureau, and on top a miniature bureau. Porter found an invoice of his effects. Saw the travelling basket.

Cross-examined. We got the key of Mr. Fields.—Nothing was disturbed the first time I went to the house. 131

Richard K. Swift sworn, says: I reside in Chicago; lived there in 1845; dealt in money, principally in real estate. Think in 1845 my brother was applied to for a loan by a man. My brother refused. Heard the man say he had lost his wife and child, and was out of money. I said to brother if he didn't let him have the money I would. I let him have $25 or $30, for which he gave me his note signed, I believe, James H. Ro-

132 villee. He left as security for the payment of his note, a brown chest, snuff brown, I think about 18 or 20 inches across ends, 3 feet or more long. As near as I can now remember, he said his wife and child died south of Chicago, on the Illinois River, in Illinois. I think he said they died about 6 weeks before. I was at Ithaca in August last; saw defendant. I thought I recognized him. I might not have recognized him in a crowd. He told me if he didn't return in a certain
133 time, I was to write to a certain place near, I think, the Mohawk River, and he would remit the money. I wrote and received no answer. I then, with Dr. Dyn and others, opened the chest; found a good many books, the box now in Court, a sheet, and some other things. He was there with me and got the money August 4, 1845. That was the date of the note. I have a statement made out February 18, 1847, of contents of the box. I remember a large bundle of papers, Lectures
134 on Phrenology, Hooper's Dictionary, E. H. Rulloff written on inside cover. Some of the names were erased; names of places rubbed out, so of names of persons.—Small box contained women's fixings; papers in bottom of the box; letters; cards marked Edward H. Rulloff; a paper on which were the words, "*Oh, that dreadful hour!*" one lock of light brown hair in paper, labelled a lock of Harriet's or Mary's hair; I thought Harriet. Think the chest was heavy with books. Saw a pocket-
135 book in box: can't identify it. Style of card is the same; pair of hose like these. Remember a piece of silk and a bead bag like this; remember a collar like this. The small box was in our house for many years. The lock of hair was lost, and so of the loose pieces of paper on which the words were written. I remember a figured lace cap for an infant. The silk was light colored—ash colored. There were a lot of small sea-shells.

Cross-examined. Defendant looks like the man I
136 loaned the money to. I next saw him in Ithaca last

August. I think he said his wife and child died on Illinois River. Think he said he had a farm down there. Think he said it was six weeks since they died. I think I expected him back in November. Note was due October 4, 1845.

Mrs. Richard K. Swift, sworn, says: I am wife of last witness. Remember his bringing this box home. Identified the articles remaining in box as the same. The infant's cap was used up. Remember the hair, but 137
not that it came in the box.

Aaron Schutt, sworn, says: I live in Dryden; am brother of Mrs. Rulloff. Before Rulloff went away in August and Ephraim followed, defendant wished me to go with him and carry him and his goods to Montezuma in a 2 horse wagon. I said I could not go. He said he would help me in harvest if I would go, and did so. I think I did not agree to go. I advised him to take them to Ithaca with a one horse wagon. He wanted to 138
save expense by my carrying them to Montezuma. Ithaca was 5 miles from his house. Montezuma was 40 or 50 miles from our house.

Ephraim Schutt, re-called, says: There is no landing on the lake nearer defendant than Ithaca. I visited defendant's house when suspicions were raised. I know defendant had a cast iron mortar that would weigh 25 or 30 lbs.; he had flat irons; on search could not find anything of them. I agree with Dr. Burdick as to ap- 139
pearances at the house. I was at Hale's store in Ithaca 5 or 6 weeks after Mrs. Rulloff's disappearance, and saw Rulloff enter the store. William shook hands with him and asked him where he had been. He said between the lakes. William asked where his wife and child were. He said between the lakes. William and he went up stairs, and I saw no more of him that day. Next saw him when he came back from my fathers, at William's. I was there when several gentlemen came in to 140
ask him about her. He would give no definite satisfaction. They left him and told him that he would proba-

bly be detained. After they were gone, he asked what he had best to do. I told him to write to her immediately, and asked him if he would remain until they got an answer from my sister. He said he would, that she was at Madison, Lake Co. Ohio. He then commenced
writing his letter; wrote one and tore it up, after that
141 he wrote another. After dark he directed the letter to N. Depuy, Madison, and gave it to me to show the gentlemen, and mail. I did so. Shortly after I mailed the letter, I was informed defendant had left. I pursued him. I went across to Geneva; got there early in the morning. Searched first train, but could not find him. At Rochester we changed cars; there I saw him and he me. I remained in car till the train was in motion, then went through the car; found him on last emigrant
142 car, on back platform, with bundle in his hand. He said he would go with me where my sister was. We went on together to Buffalo. I said we would stop at the Mansion House. He objected, expressed some fear that the officers would be after him. We finally went there. I called for a room, and both occupied it. I said I would enter my name on Hotel book. He said he wold sleep on floor, as there was but one bed. He took off his shoes. His feet were blistered badly; said
143 he blistered them walking from Ithaca to Auburn. He got to sleep. I locked him in and went away, came back. He was frightened as I came in; said he thought it was officers from Ithaca after him. Next morning we went down to the boat; got tickets for Fairport. He paid for them, and while I was looking about for a place to sit down, and while crowding through the crowd, he disappeared. The boat started, and I failed to find him on board. I then stopped at Erie, where I
144 had a brother living. I enquired of him, but could hear nothing from Rulloff or his wife. In the morning I took another boat and went to Fairport. With a private conveyance I went to Madison, and enquired for N. Depuy and Mrs. Rulloff; could hear of no such per-

sons; no Mr. Depuy had ever lived there. It was a small place, quite small. I left their names with persons, and asked them to write if any such persons were heard from. I went from there to Cleveland; obtained a warrant; went down to landing; saw two large steamers 145
coming. Rulloff was on the 2d boat with the emigrants. I then went after an officer. When I came back I found him in an eating house, behind a dry goods box. I pointed him out to the officer, who approached him and said, is your name Rulloff? He said no sir. I said it is him. Then he was arrested, and I then brought him back, and he has since been in confinement. He since told me his wife and child were living, but he would not tell me where they were.

Cross-examined. Heard the officer pronounce the 146
name of Rulloff. The sheriff told him that he would keep him in irons unless he would consent to go. I got a warrant in Buffalo from a magistrate, without examination, and brought him in irons from Buffalo. I recollect hearing the officer call the name. Never have seen anything of the wife or child or heard anything.

The foregoing is all the evidence given on said trial;

Whereupon the counsel for the defendant renewed
his motion made at and upon the opening of the cause 147
to the jury, and insisted that as it now appeared that no direct evidence of the death or the murder of the infant daughter had been given, no conviction for murder could be properly had or allowed, and that the jury should be so advised and instructed, and should be directed to find a verdict of Not Guilty. But his honor declined and refused so to advise, instruct and direct the jury; to which said refusal the counsel for the defendant did then and there in due form except. 148

The cause was then summed up to the jury by the counsel for the respective parties, and his honor, the said justice, charged the jury as follows:—

GENTLEMEN:

The prisoner at the bar, Edward H. Rulloff, was indicted in the Tompkins County Oyer and Terminer for the murder of his infant daughter about 3 months old. The Indictment was carried into the Supreme Court by
149 certiorari, and the cause came down to the Tompkins Circuit in August last for trial. The Court being unable to obtain a jury in that county, ordered the trial to be had in this county, and hence in the discharge of my duty, as Judge presiding in this Circuit, the duty of presiding on this trial has unexpectedly fallen upon me; and the same act which has devolved this highly responsible duty upon me, has also cast upon you the great responsibility of determining this traverse be-
150 tween the government and the prisoner at the bar.— The charge against the prisoner is no less than the murder of his own infant daughter of two or three months of age. Murder, under our Statute, is defined to be the unlawful killing of a human being. *First.* When such killing is perpetrated from a premeditated design to effect the death of the person killed or of any human being. *Second.* When perpetrated by an act imminently dangerous to others, and evincing a deprav-
151 ed mind regardless of human life, although without any premeditated design to effect the death of any particular individual. *Thirdly.* When perpetrated without any design to effect death by a person engaged in the commission of a felony.

You should not forget, gentlemen of the Jury, that we commence this trial with the presumptions all in favor of the prisoner. The law in its clemency, presumes the entire innocence of the prisoner, and the
152 government before they have a right to ask the conviction of the prisoner, are bound not only to prove the alleged murder, but are required also to adduce evidence to establish the guilt of the prisoner beyond any reasonable doubt. In order to maintain their case, the government are called upon to prove, *First*, that a mur-

der has been committed, and, *Secondly*, that the prisoner at the bar is the person who committed such murder. The first branch of the case, the *Corpus Delicti* as it is termed in the law, by which is meant the body of the 153
crime, the fact that a murder has been committed must be clearly and conclusively proved by the government. The *Corpus Delicti* is made up of two things: *First*, of certain facts forming the basis of the *Corpus Delicti*, by which is meant the fact that a human being has been killed, and *Secondly*, the existence of criminal and human agency as the cause of the death. Upon this first branch of the case the counsel for the prisoner claims and insists that it can only be proved by direct and 154
positive evidence; that the government must prove the fact of death by witnesses who saw the killing, or at least the dead body must be found. It has been said by some judges that a conviction for murder ought never to be permitted unless the killing was positively sworn to or the dead body was found and identified. This, as a general proposition, is undoubtedly correct, but like other general rules has its exceptions. It may sometimes happen that the dead body cannot be produced, although 155
the proof of death is clear and satisfactory. A strong case in illustration is that of a murder at sea, where the body is thrown overboard in a dark and stormy night, at a great distance from land or any vessel. Although the body cannot be found, nobody can doubt that the author of such crime is guilty of murder. In such a case, the law permits the jury to infer that death has ensued from the facts proved. The circumstances being such as to exclude the least if not almost every 156
probability that such a person could have escaped with life, and yet there is a bare possibility in such a case that the person may have escaped with life. I am of opinion that the rule as understood in this country, does not require the fact of death to be proved by positive and direct evidence, in cases where the discovery of the body after the crime is impossible. In such cases

the fact may be established by circumstances, where
157 the evidence is so strong and intense as to produce the full certainty of death. By the proof of a fact by presumptive evidence, we are to understand the proof of facts and circumstances from which the existence of such fact may be justly inferred. The facts and circumstances to establish the death in the case of murder in the absence of any positive evidence, must be so strong and intense as to produce the full certainty of death, or as Mr. Wills, in his Treatise on Circumstantial evi-
158 dence, 162, (Burrill on Cir. Ev., 680,) says the death may be inferred from such strong and unequivocal circumstances as renders it morally certain and leaves no ground for reasonable doubt. The government claim that they have proved the body of the crime in the case under consideration up to the strictest requirements of this rule. This is for you to determine, gentlemen of the Jury. The determination of it involves the examination of all the facts and circumstances dis-
159 closed by the evidence in the case. I am very much relieved from calling your attention to these facts and circumstances, by the very full and able argument of the counsel for the prisoner and the people, who have rendered you very great aid in your duties, and have relieved the Court in the performance of its duty by their comments upon the evidence in the case. This question is to be determined by you, gentlemen of the Jury, in view of all the evidence reflecting in the least
160 degree upon this branch of the case.

The government places great reliance to establish the death in this case upon the sudden disappearance of this woman and child under the circumstances of this case, without any apparent cause, and the failure to find either the mother or child after the most diligent search for eleven long years. This fact is very proper to be taken into account in determining this question, and is a fact of no little importance in determinining the
161 question; but although this unaccountable disappear-

ance and failure to ascertain any trace of them may lead to a strong suspicion that those parties have come to an untimely end, yet they are not alone sufficient proof of the death of this child and mother to justify a conviction, because the fact may be accounted for on the hypothesis (however improbable) that they may have absconded and eluded all inquiry, or may be kidnapped and concealed and be still alive, and upon this
branch of the case it is your duty to take into consider- 162
ation the fact which seems to be admitted on this trial, that the prisoner at the bar was convicted in the year 1846 of having abducted his wife alive.

The government rely upon the confessions of the prisoner made to and proved by Mr. Swift, to prove the death of this child. Swift proves the prisoner in Chicago, on the 4th of August, 1845, and he says that he told him he had lost his wife and child about 6 weeks before. He stated that they died south of Chicago, in Illinois, 163
about 6 weeks before. It is for you to say, gentlemen of the Jury, what construction should be put upon this language. You are required by the law to take this confession all together, as well that which makes for the prisoner as that which makes against him. The law, however, does not compel you to adopt the whole confession, if you find that the other evidence in the case proves any part of the confession to be untrue. I should say to you, however that confessions are a doubtful spe- 164
cies of evidence, and are to be received with great caution by both Courts & Jurors; and the law requires me to say to you that no man can be convicted of a criminal offence upon his own confession alone that a crime has been committed. Confessions are competent evidence in the case, but alone are not sufficient.

You have listened to the detail of the evidence adduced by government from the evening of the 23d of June, 1845, when the prisoner at the bar is proved to have 165
been in his own house with his wife and infant child, up to the time when he is arrested in the city of Cleve-

land and brought back by Ephraim Schutt, and lodged in the Tompkins County Jail, and all of these facts and circumstances have just been so ably and elaborately commented upon by both the counsel for the prisoner and the people, and the legitimate deductions to be drawn therefrom have been so fully presented to your
166 consideration, that I am relieved from the duty of going over the evidence. It is proper, however, that I should state to you the rule which should govern you in the ultimate conclusion to be attained from the evidence in the case.

In regard to the first branch of the case, the establishment of the *corpus delicti*, the body of the crime, before you find it against the prisoner, you must be satisfied from the evidence in the case that it is established by
167 presumptive evidence of the most cogent and irresistable kind—that it is established by circumstances proved so strong and intense as to produce the full certainty of death.

In regard to the second branch of the case, by which we mean the traverse between the government and the prisoner as to the question of the defendant's guilty agency in the commission of the alledged murder, as to this question of the defendant's guilt of the crime imputed, the rule which should govern is this: The gov-
168 ernment are required, before they can claim a conviction, to prove by their evidence the guilt of the prisoner beyond any rational doubt.

If, upon a full and fair consideration of all the evidence in the case, doubts remain in the minds of the Jury, it is the duty of the Jury to acquit. Upon this branch of the case the doubts however, which require an acquittal, should be rational doubts. They are not doubts which may arise in a speculative mind, after the
169 reason and judgment are thoroughly convinced by the evidence in the cause.

To so much and such parts of said charge and instructions given to the Jury as submits to them to in-

fer, presume and find without direct proof the death and the murder of the infant daughter, the counsel for the defendant did then and there in due form of law except.

The Jury returned a verdict of Guilty.

And, inasmuch as the said several matters so produc- 170
ed and given in evidence, and the said several objections, motions, decisions, rulings, instructions and charge to the Jury do not appear by the record of the verdict aforesaid the counsel for the defendant did then and there propose their aforesaid exceptions to the opinions, decisions, instructions and charge aforesaid of the said Justice, and requested him to put his seal to this bill of exceptions, containing the said several mat-
ters according to the form of the statute in such cases 171
made and provided; and, thereupon, the said Justice, at such request, did put his seal to this bill of exceptions, pursuant to the aforesaid statute, this 28th day of October, 1856. CHARLES MASON, [L. S.]

State of New York, Tioga County Clerk's office, ss:

I, Leroy W. Kingman, County Clerk of the county of Tioga, do hereby certify that the foregoing is a true record of the proceedings, trial, conviction and excep-
tions, in the case of the People agt. Edward H. Rulloff; 172
and that the said proceedings, trial, conviction and exceptions, as aforesaid, were had at a Circuit Court held at the Court House in said oounty of Tioga, on the 28th day of October in the year 1856.

In testimony whereof, I have hereunto set my hand and official seal, this 13th day of January, in the year 1857. [L. S.]

L. W. KINGMAN,
Clerk, Tioga Co., N. Y.

And the said Edward H. Rulloff, by his attorney and 173
counsel, he not being personally present, having moved for a new trial upon said bill of exceptions, after hearing the counsel for said Rulloff in favor of said motion, aud the counsel on the part of the people in opposition

thereto, and due deliberation being thereupon had, it was ordered that said motion be denied.

And afterwards, to-wit, on the 7th day of July, 1858, before the justices of the Supreme Court aforesaid, to-
174 wit: Justices Gray, Mason, Balcom and Campbell, at a term of said court of the state of New-York, in and for the Sixth Judicial District held at the Court House in Delhi, in the county of Deleware, came the said Edward H. Rulloff in his own proper person, and the people by Marcus Lyon, District Attorney of the county of Tompkins aforesaid, and the record of said trial and conviction and the defendant's exceptions thereto being before said court, and fully under-
175 stood and examined, and the said Edward H. Rulloff being inquired of by the presiding justice in open court what he had to say why sentence should not be pronounced against him, moved for a new trial upon said bill of exceptions in person, upon, amongst other grounds, because it appears in said bill of exceptions, and otherwise, that the writ of certiorari removing the Indictment from the Oyer and Terminer to the Supreme Court was returnable at and returned to a Special
176 Term of said Court, and the venue or place of trial changed to Tioga by order of said Special Term, and that the Tioga circuit had no jurisdiction of the matter; that inasmuch as he was not personally present at the term held at the Court House in Binghamton when the motion for a new trial was argued, the order denying the motion for a new trial was void and of no effect and no judgment could be entered thereon, but a re-argument should be ordered: that the term of the Court
177 held at Binghamton, which heard and passed upon said motion for a new trial was composed of Justices Gray, Mason and Balcom; that Justice Mason could not legally take part in deciding upon a motion for a new trial, he having presided on the trial and it appearing by the opinions of the Court as given by the members thereof, that Justice Balcom did not concur in denying said mo-

tion for a new trial, but expressly dissented therefrom, that the order denying said motion was a nullity; and due deliberation being thereupon had, it is ordered by 178
the said court now here, that the motion for a new trial made by said Rulloff, upon said bill of exceptions, be and the same is hereby denied, and that the said motion for arrest of Judgment also made by said Rulloff, on the said several grounds be also denied. To which said decisions and each of them the said Edward H. Rulloff then and there duly excepted; and it is thereupon considered and ordered by the Court now here, that in pursuance of said conviction, the said Edward H. Rulloff be 179
taken to the jail of the said people of the State of New York of the said county of Tompkins from whence he came, and from thence on the 27th day of August, 1858, to the place of execution, and then and there, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon of that day, be hanged by the neck until he be dead.

Judgment signed this 7th day of July, 1858.
CHAS. G. DAY, Clerk.

SUPREME COURT.

At a General Term of the Supreme Court of the State 180
of New York, held in and for the Sixth Judicial District, at the Court House, in the village of Delhi, county of Deleware, on the 7th day of July, 1858.

Present, Hon. HIRAM GRAY,
CHARLES MASON,
RANSOM BALCOM,
WM. W. CAMPBELL,
} Justices.

THE PEOPLE
Agt.
EDWARD H. RULLOFF.

The Defendant, Edward H. Rulloff, having been duly 181
convicted of the crime of murder in the Tioga Circuit,

and having duly moved for a new trial upon a bill of exceptions taken upon said trial, and counsel upon the part of said Edward H. Rulloff, having been heard in support of said motion, and also on the part of the people against the same, and the said Edward H. Rulloff, having been heard in support of said motion in person, and due deliberation being thereupon had, it is

Ordered, that the said motion for a new trial be and
182 the same is hereby denied, and the said Edward H. Rulloff in open court having been inquired of by the presiding Justice what he had to say why the sentence of the law should not be pronounced against him upon said conviction, and having addressed the Court and alleged his reasons why sentence should not be pronounced, it is

Ordered that the said Edward H. Rulloff be returned to the place of confinement, there to remain until the
183 27th day of August next; and on that day be taken to the place of execution pronounced by law, and between the hours of ten o'clock in the forenoon and two o'clock in the afternoon, be hanged by the neck until he be dead.

STATE OF NEW YORK,
DELAWARE COUNTY CLERK'S OFFICE } ss.

I do hereby certify that I have compared the foregoing copy order with the original on file and of record
184 in this office, and that the same is a correct transcript therefrom and of the whole thereof.

In Testimony whereof I have hereunto set my hand and official seal, this 7th day of July, 1858.

[L. S.] BENJ. CANNON, Clerk.

STATE OF NEW YORK,
TOMPKINS COUNTY CLERK'S OFFICE. } ss.

I, Charles G. Day, Clerk of Tompkins County, do hereby certify that I have compared the foregoing cop-

ies of the Records, Indictments, Proceedings, Orders, 185
Conviction and Exceptions in the case of The People
vs. Edward H. Rulloff, with the originals on file or of
Record in this office, and that the same are correct cop-
ies thereof and of the whole of such originals and
original Records.

In witness whereof I have hereunto set my hand and official seal this 7th day September, 1858.

CHARLES G. DAY, 186
[L. S.] Clerk of Tompkins County.

IN COURT OF APPEALS

The People of the State of New York:

To the Justices of the Supreme Court of the State of New York, in and for the Sixth Judicial District—Greeting:

Because in the record and proceedings, and also in the giving of Judgment upon a certain Indictment, made against Edward H. Rulloff, of having on the 23d day of June, in the year eighteen hundred and forty- 187
five, at Lansing, in the county of Tompkins, and State of New York, feloniously murdered the infant daughter of him, the said Edward H. Rulloff, in our said Supreme Court before you, as it is said manifest error hath intervened, to the great damage of the said Edward H. Rulloff, as by his complaint we are informed.

We, being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the said Edward H. Rulloff in this be- 188
half, do command you, that if the judgment be thereupon given, then you send to our Court of Appeals, distinctly and openly, under your seal, the record of that judgment, with all things touching the same, and this writ, so that is may have them at the Capitol in the city of Albany, on the last Tuesday of September next, that the record and proceedings aforesaid being inspected, the Court of Appeals may cause to be further done thereupon for the correcting that error what, of 189

right and according to the law and custom of the State of New York, ought to be done.

Witness, Alexander S. Johnson, Chief Judge of the Court of Appeals, at the Capitol in the city of Albany, the eighth day of July, one thousand eight hundred and fifty-eight.

[L. S.] RUSSEL F. HICKS, Clerk.

BOARDMAN & FINCH, Defendant's Attorneys.

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190 I allow the within writ of error; and I expressly direct that this allowance is to operate as a stay of proceedings on the judgment upon which the said writ is brought. Dated this 8th day of July, 1858.

H. GRAY.

SUPREME COURT.

THE PEOPLE
Agt.
EDWARD H. RULLOFF.

OPINION.

191 Mason J. The only question presented by the prisoner's counsel upon the bill of exceptions, in this case, is whether upon the trial of an indictment for murder, the *corpus delicti* can be proved by any other than direct evidence. The question is one of the highest importance, and I have examined it with the most anxious desire to arrive at a just conclusion, and a correct determination of the question, and I have bestowed upon
192 it the most careful and deliberate consideration, and the result is a firm conviction that there is nothing in the results of experience, or in the nature and character of circumstancial evidence, which forbids the *corpus delicti* being proved and established by indirect evidence any more than there is the guilt of the prisoner or any other fact in the case. There is no more insecurity in the sanctions given to circumstantial evidence as ad-
193 mistered at the present day in the courts of England

and this country than there is in direct evidence, and every attempt which has been made to assail circumstantial evidence from the results of experience has done no more than to prove that it necessarily partakes of the infirmities incident to all human testimony. Every consideration which has been argued against it on this ground has only tended to detract from the credibility of human testimony generally, and has shown that the fallibility of human testimony applies to cir- 194
cumstantial only in common with other evidence. If the annals of the judicial history of England from the time of William the conquerer to the present day could be put into a volume, it would show more convictions of innocent persons in capital cases by direct evidence, the results of fraud and perjury and honest mistake than those upon circumstantial evidence alone. There is little doubt that if the catalogue of victims be confined to perjured witnesses alone, the result would show 195
a greater number than can be imputed to the account of circumstantial evidence, and yet honest mistake and fallibility in direct and positive proof would remain to claim its share.

The testimony of the senses cannot be implicitly relied on, even where the veracity of the witness is above all suspicion, and consequently lamentable mistakes have occurred in direct and positive proof as to the identity of the prisoner. Sir Thomas Darmout, an em- 196
inent English barrister, a gentleman of acute mind and strong understanding, swore positively to the identity of two men whom he charged in robbing him in open day light. But it was proved by the most conclusive evidence that the men on trial were at the time of the robbery at so remote a distance from the spot, that the thing was impossible. The men were acquitted, and some time afterwards the robbers were taken and the articles stolen found upon them. Sir Thomas, on see- 197
ing these men, candidly acknowledged his mistake, and it is said gave a recompense to the men who had so

narrowly escaped conviction. Rex vs. Wood & Brown, State Trials, vol 28, p. 819. Wills on cir. ev., 47, 48, 31. The case of Rex vs. Clinch & McAckley, 3 P. & T. 144, where the prisoners were convicted at the old Baily sessions in 1799 of the murder of one Freer, and executed. The identity of the prisoners was positively
198 sworn to by a lady who was in company with the deceased at the time of the robbery and murder. It turned out afterwards that she was mistaken in the persons. Wills on cir. ev. 110. An equally fatal mistake was made in the conviction of Robinson at the old Bailey in July, 1824, upon direct and positive proof. See Rex vs. Robinson, Session papers 1824. Wills on cir. ev. 110. A similar mistake was made by another prosecutor a few months before the last mentioned case,
199 where a young man was tried for highway robbery, and the prosecutor swore positively that the prisoner was the man who robbed him of his watch. Wills on cir. ev. 111. Grow's case was a conviction for murder by an honest mistake in the witnesses of personal identity. They mistook Grow for Geddely, the real criminal. The remarkable case of Hoag, tried in the city of New York for bigamy, forcibly illustrates how easy it is to be mistaken upon a question of personal identity.
200 5 C. H. Rec. 124. Cases of this description might be greatly multiplied, but they would only serve to establish the fallibility of even direct and positive proof.—The evidence of the identification of the dead body in many of the cases referred to by the counsel for the people upon the argument of this case, although classed under the head of direct evidence, are less satisfactory proof of the *corpus delicti* than the evidence in the case at bar furnishes. In the case of Eugene Aram, where
201 the skeleton was found in a cave 13 years after the murder, the proof of the identity of the body as that of Clarke was very faint, and but for the strong circumstantial evidence a conviction could never have been justified. Charles the II., after being much disfigured,

was identified by a resemblance to the head upon the coins issued during his reign. The Marchioness of Salisbury, found in the ruins of Hatfield House, was identified by gold appendages to the artificial teeth.—
In the case of Mary Martin, the identification was by 202
missing teeth. In the case of Clows, the body was identified 23 years after the murder by the peculiarity of the teeth. The recent case of Dr. Webster in our own country, the identification of the body consisted in the evidence of a dentist as to the identity of the artificial teeth. There is little use in going over cases of this description. The evidence of identity in very many of these and similar cases which might be greatly multiplied, are, although classed under the head of 203
direct evidence, far less satisfactory proof to establish the *corpus delicti* than many cases which rest entirely upon circumstantial evidence. It is therefore no reason for rejecting circumstantial evidence that a few cases can be found in the course of perhaps as many centuries, where innocent men have been convicted upon this species of evidence, for the results of experience have demonstrated that the same accusation with equal
if not greater force may be brought against direct evi- 204
dence. It was well and beautifully said by Park J., in Rex vs. Thurtell, tried for the murder of Wane at the Hartford assize in January, 1824, that "the eye of "Omniscience can alone see the truth in all cases; cir- "cumstantial evidence is there out of the question, but "clothed as we are with the infirmities of human na- "ture, how are we to get at the truth without a concat- "enation of circumstances? Though in human judica- "ture imperfect as it must necessarily be, it sometimes 205
"happens perhaps, in the course of one hundred years, "that in a few solitary instances, owing to the minute "and curious circumstances which sometimes envelope "human transactions, error has been committed from a "reliance on circumstantial evidence; yet this species "of evidence, in the opinion of all those who are most

"conversant with the administration of justice and most
"skilled in judicial proceedings, is much more satisfac-
206 "tory than the testimony of a single individual who
"has seen the fact committed." 1 Cow. & Hill's notes,
393.

It was said by Washington Justice, in U. S. vs. Johns, 1 Wash. C. C. R. 372, that circumstantial evidence "is sufficient and is often more persuasive than the positive "evidence of a witness who may be mistaken, whereas "a concatenation and a fitness of many circumstances
207 "made out by different witnesses can seldom be mista-
"ken or fail to elicit the truth." It was said by Livingston justice, that "the rule even to a capital case is, "that should the circumstances be sufficient to convince "the mind and remove every rational doubt, the jury is "bound to place as much reliance on such circumstan-
"ces as on direct and positive proof, for facts and cir-
"cumstances cannot lie." Jacobson's case, 2 C. & H. Rec. 143; 1 Cow. & Hill's notes, 308. Burnett says
208 "*circumstances are inflexible proofs.*" Burnett on the common law of Scotland, p. 523. Paley says "circum-
"stances cannot lie." Prin. mor. & Political Ph. Book 6, chapter 9. Burke the distinguished statesman and orator has said that "when circumstantial proof is in
"its greatest perfection, that is when it is most abun-
"dant in circumstances, it is much superior to positive "proof." Burke's works, vol. 2, p 624. Paley has declared and with more caution, that "a concurrence of
209 well authenticated circumstances, composes a stronger ground of assurance than positive testimony unconfirmed by circumstances usually affords." Prin. of mor. and Pol. Phi. Book 6, ch. 9. It was said by Legge upon the trial of Mary Blandy for murder, that where "a violent presumption necessarily arises from the circumstances, they are more convincing and satisfactory than any other kind of evidence, because facts cannot lie." 28 vol. State Trials, 1187. Justice Butler stated to the
210 jury in his charge in the trial of John Donellan for mur-

der, that "a presumption which necessarily arises from circumstances is very often more convincing and satisfactory than any other kind of evidence because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt without affording opportunities of contradicting a great part, if not all of those circumstances." See Gunning's report of trial. The opinions of Judges of similar im- 211
port might be multiplied to almost any extent, but the character and force of circumstantial evidence is so well defined and recognized by all the elementary writers upon evidence, that it becomes unnecessary to pursue it. Starkie, in speaking of circumstantial evidence, says, "it is in its own nature capable of producing the highest degree of moral certainty." 3 Stark. Ev. 499, 480.
The nature and character of circumstantial evidence are as well elucidated and described by Wills. in his admi- 212
rable book on Cir. Ev., as in any author which has fallen under my observation. He maintains that circumstantial evidence is capable of producing an equal degree of moral certainty with direct evidence; and Burrill, in his most excellent treatise on Cir. Ev., maintains the same claim for it. In short, there is not a writer of re-
spectability upon the principles of evidence, but what admits that circumstantial evidence has the inherent capacity to produce moral certainty in its results. It 213
is a principle of circumstantial evidence that it is never permitted to rise to the dignity of proof, until it does produce moral certainty. It is correctly said by Wills that a presumption which necessarily arises from circumstances, cannot admit of dispute and requires no corroboration. He adds, if evidence be so strong as necessarily to produce certainty and conviction, it matters not by *what kind* of evidence the effect is produced, and the intensity of the proof must be precisely the 214
same whether the evidence be direct or circumstantial.
It is not, he adds, intended to deny that circumstantial

evidence affords a safe and satisfactory ground of assurance and belief, nor that in many individual instances it may be superior in proving power, to other individual cases of proof by direct evidence. Wills on Cir Ev. 29, 45. It was said by Lord Erskine, with the strictest philosophical truth in the Banbury Peerage case, "that
215 proof is nothing more than a presumption of the highest order." Wills Cir. Ev. 48. It is equally so whether the evidence be direct or circumstantial. If a witness swears directly to a fact, as a general rule we regard the fact as proved, because we presume the witness has told the truth; yet it is but a presumption after all. Having considered thus far the nature and character of circumstantial evidence, let me enquire whether it has not sufficient proving power to establish the *corpus delicti*
216 in a charge of murder.

Lord Hale has often been referred to as authority against the rule, and in some instances has been followed as authority, denying the admissibility and competency of such evidence to establish the *corpus delicti* in such a case. Lord Hale said, "I never would convict any person of murder or manslaughter unless the fact is well proved to be done, or at least the dead body found, for the sake of two cases," which he states of
217 wrong convictions where the body was not produced or found and identified. 2 Hale 290, 2 Stark. on Ev. 513. Now the only reason assigned by Lord Hale against the competency of this species of evidence, if it can be regarded as an opinion against its competency, was that in two instances conviction had been had upon circumstantial evidence to establish the *corpus delicti*, when it turned out afterwards that the persons were innocent. This is no argument for rejecting this species of evi-
218 dence, for the same accusation can be brought against the proof of the guilt of the prisoner by circumstantial evidence, where the *corpus delicti* has been clearly established by direct evidence, and the same charge can be brought against direct evidence as we have shown.—

This remark of Lord Hale, although it has been often quoted by Judges, and has found its way into the Elementary Books upon evidence, and publicists upon criminal law, yet it has not been generally regarded as authority, but at most as merely advisory, and the rule 219
as stated by him is now generally repudiated as unsound. It is stated by Burrill, in his valuable treatise on circumstantial evidence, that "the death may be inferred from such strong and unequivocal circumstances as renders it morally certain and leaves no ground for reasonable doubt." Burrill on Cir. Ev. 680. It is said by Wills, in his most estimable essay on cir. ev., that it is a fundamental and inflexible rule of legal procedure and of universal obligation to require satis- 220
factory proof of the *corpus delicti*, either by direct evidence or by cogent and irresistible grounds of presumption. Wills on Cir. Ev. 156, 178. He says again at page 185, after quoting the remarks of Lord Hale, "that to require the discovery of the body in all cases would be unreasonable, and lead to absurdity and injustice, and is indeed frequently rendered impossible by the act of the offender himself. The fact of death, therefore," he adds, "may be inferred from such strong 221
"and unequivocal circumstances of presumption, as "render it morally certain and leave no ground of rea- "sonable doubt." Wills on Cir. Ev. 163, 185, from the 3d London edition. Greenleaf adopts the rule of Wills; he says that even in the case of homicide, though ordinarily, there ought to be the testimony of persons who have seen and identified the body; yet this is not indispensably necessary in cases where the proof of death is so strong and intense as to produce the full assurance 222
of moral certainty. 3 Greenleaf ev., p. 30. He recites the remark of Lord Hale, in sec. 131, same vol., p. 121, and regards it as only advisory, and repudiates it as a rule. Starkie, in his first vol., page 511, 6th Am. ed., quotes Lord Hale with approbation, and declares the rule in unqualified terms to be, that the *corpus delicti*

can only be proved by direct evidence of the fact, or by discovery and inspection of the dead body. He has,
223 however, referred to the subject again in his second vol., at page 513, and corrected himself in the employment of the following language: It has been laid down by Lord Hale, as a rule of procedure in cases of murder, that to warrant a conviction, proof should be given of the death by evidence of the fact or the actual finding of the dead body. But, he adds, although it be certain that no conviction ought to take place unless there is the most and decisive evidence as to the death,
224 yet it seems that actual "proof of the finding and identifying of the body is not absolutely essential;" and it is evident that to lay down a strict rule to that extent, might be productive of the most horrible consequences. 2 Starkie Ev. 513, 6th Am. from a new London ed. It is stated in Russell on crimes, that it has been holden as a rule that no person should be convicted of murder unless the body of the deceased has been found; and then, after quoting the language of Lord Hale, he adds:
225 "But this rule it seems must be taken with some qualifications, and circumstances may be sufficiently strong to show the fact of murder, though the body has never been found." 1 Russ. on Crimes 567. It is said by Chitty, in his Cr. Law, that "it is said to be a good general rule that no man should be found guilty of murder unless the body of the deceased is found, because instances have arisen of persons being executed for murdering others who have afterwards been found
226 to be alive." But this rule must be taken rather as a caution than "as a maxim to be universally observed, for it would be easy in "many instances so to conceal the body as to prevent it from "being discovered." 1 Chitty Cr. Law 758. 2 Ach. Cr. plead. 208, Waterman's ed. The following authorities will be found fully to establish the rule, that where the discovery of the body cannot be had, that the *corpus delicti* may be proved by circumstantial evidence, where the facts and cir-

cumstances are so strong as to render it morally cer- 227
tain and leave no ground for reasonable doubt.

Wharton's Am. Law of Homicide, 316, 317. Burrill Cr. Ev. 678, 679, 680–70–117. Cow. & Hill's Notes, part I, vol 3, Am. ed., pages 470, 471, 472, 502, 304. Whartons' Am. Crim. Law, pages 284, 285, 286. 2 Arch. Cr. Ple. & Pr., 134, 135. Water's ed., Barbour's Cr. Law, 455, 2d ed. U. S. vs. Johns., 1 Wash. C. C. R. 372.— State vs. Freer, 1 Bright's Ohio R 20. U. S. vs Gil-
bert, 2 Sumner's C. C. R. 27. Commonwealth vs. Web- 228
ster, 5 Cush. R. 296. Wills on Cir. Ev. 185 and 195.—
In the case of the U. S. vs. Gilbert, supra, justice Story having this rule of Lord Hale pressed upon him, said: "The proposition cannot be admitted as correct in point of common reason or of law, unless courts of justice are to establish a positive rule to secure persons from punishment, who may be guilty of the most flagitous crimes."
In the case of murders committed on the high seas, the
body is rarely if ever found, and a more complete en- 229
couragement and protection for the worst offences of this sort could not be invented than a rule of this strictness. It would amount to a universal condonation of all murders committed on the high seas. I assume, therefore, that the *corpus delicti*, as well as the guilt of the prisoner, may be proved by circumstantial evidence.
It is undoubtedly true, as a general rule, that the dead body ought to be found and indentified, but like all oth-
er general rules it has its exceptions. It becomes im- 230
portant then to enquire what are the exceptions to this general rule. There is no particular class of cases that can be said in law to form an exception. The application of the familiar and well settled rule in regard to allowing circumstantial evidence to prove a fact, is the only one that can be recognized in such a case: that rule is, that circumstantial evidence can never be justifiably resorted to, except where direct evidence is unat-
tainable. Wills on Cir. Ev. 47. Starkie says circum- 231
stantial evidence ought in no case to be relied on, where

direct and positive evidence, which might have been brought by the prosecutor, is willfully withheld. 1 Stark. ev. 515. Wills on Cir. Ev. 47. It is not then allowed to prevail to the conviction of an offender, simply because it is politic, but because it is in its own nature capable of producing the highest degree of moral certainty in its application. 1 Stark. Ev. 494, 495. The
232 mistaken policy which led some of the writers on the civil and common law to modify their rules of evidence according to the difficulties of proof incident to particular crimes, and to adopt the execrable maxim that the more atrocious was the offence the slighter was the proof necessary, has no place in the wise common law principles of evidence as administered in England and this country. Wills on Cir. Ev. 178, 157. That no consideration of supposed expediency is permitted to
233 supercede the immutable obligations of justice, is a wholesome maxim of our common law rules of evidence. Wills 118. Many of the continental codes of Europe prescribe imperative formulas descriptive of the kind and of the amount of evidence necessary to constitute legal proof. Wills 286, 211. But the doctrine is wholly repudiated by the common law principles of evidence. It does not attempt to fix with arithmetical exactness a common standard of proof which
234 shall influence with unvarying intensity, and affect the minds of all men alike. Wills on Cir. Ev. 236. The common law principles of evidence regard such rules, not merely as harmless and superfluous, but as positively pernicious and dangerous to the cause of truth; and while they operate as snares for the conscience of the Judge, they are unnecessary for the protection of the innocent, and effective only for the impunity of the guilty. Wills on Cir. Ev. 236, 237. In strict accor-
235 dance with these principles Mr. Starkie, in discussing the principles of cir. ev., says: "What circumstances will amount to proof can never be matter of general definition. The legal test is the sufficiency of the evidence

to satisfy the understanding and conscience of the Jury. "On the one hand absolute metaphysical and demon- " strative certainty is not essential to proof by circum- " stances. It is sufficient if they produce moral certain- "ty to the exclusion of every reasonable doubt." 1 Stark Ev. 574. 3 Stark. Ev. 514. See also 1 Cow. & 236 Hill's Notes 308. Greenleaf says it is obvious that upon this point no precise rule can be laid down except that the evidence ought to be strong and cogent. 3 Greenleaf Ev., p. 30, 32. The doctrine is affirmed by Wills in the strongest terms. Wills on Cir. Ev. 36, 21, 41, 42, 26. In the case at bar there was no direct evidence of the *corpus delicti*, and as it was most evident that none could be adduced in the case, I am of opinion, for the reason above stated, that I was right in saying to the 237 Jury that the *corpus delicti* might be proved by circumstantial evidence, where the evidence is so strong and intense as to produce the full certainty of death; or, in other words, that the death might be inferred from such strong and unequivocal circumstances as renders morally certain and leaves no ground for reasonable doubt. I cautioned the Jury that before they could find this issue against the prisoner, they must be satisfied from the evidence in the case that it was established by pre- 238 sumptive evidence of the most cogent and irresistible kind—that it was established by circumstances proved so strong and intense as to produce the full certainty of death. Under this charge the Jury responded in a verdict of guilty. It was an impartial verdict upon the evidence in the case, and accorded with my own conviction of the case, and entertaining the most deliberate opinion that no principle of law was violated upon the trial, and that no injustice was done to the prisoner in 239 the verdict of the jury, I am of opinion that a new trial should be denied.

SUPREME COURT.

THE PEOPLE
Agt.
EDWARD H. RULLOFF.

OPINION.

H. Gray, J. The only question presented is as to the the sufficiency of circumstantial evidence to establish the criminal act charged in the indictment.

240 It is stated as a rule of law by some elementary writers of high authority upon questions of evidence, that however strong or numerous the circumstances may be, to establish a fact that a murder has been committed, they avail nothing unless the death be first distinctly proved by inspection of the body. 4th Blackstone's Com. 359. Stark on Ev. 3d ed. 509.

This rule originated with Sir Mathew Hale who said he would never convict any person of murder or man-
241 slaughter, unless the fact were proved to be done, or at least the body found dead for the sake of two cases. 2 Hale's P. C. 290. I have examined those cases and although there is much in them calculated to induce courts to caution jurors to consider with the greatest care and scrutiny the evidence submitted for their consideration, to keep in mind the legal presumptions of innocence, and give the accused the benefit of every reasonable doubt, yet I am not satisfied that they war-
242 rant a court in declaring, that they will not carry into execution the verdict of a jury, founded upon evidence to the admisibility of which there is no possible objection, and which comes fully up to the legal test of proofs in every other case, and upon every other question that can arise however highly penal the consequences may be. In one of the cases referred to by Lord Hale two things occurred out of the ordinary course of legal proceedings, without which a conviction would
243 not have ensued—it was the well known case of an uncle charged with murdering his niece; he was admonished by the justices before whom he was examined, to

find out the child by the next assize; not being able to comply with the judicial admonition he feared the consequence, and to avoid it brought another child like her in person and years having appareled her like the true child. The deception was discovered and upon the presumption arising from the child's absence and
the fraudulent substitution he was convicted and execu- 244
ted. It was afterwards discovered that the missing child was living. The melancholy result in that case may well be attributed to the extraordinary demeanor of the justices and the accused, and not to any defect in the rule of evidence adopted. The other is a case given by Lord Hale of a man being convicted of the murder of another. The latter had been a long time
missing, and was supposed to have been murdered by 245
the accused, and consumed by him to ashes in an oven; the accused was convicted and executed, and the latter returned within a year. It is enough to say of this case that under the rule now sought to be enforced by the prosecution, properly administered and the accused reasonably well defended, no such conviction could at this age be had. That there have been other cases of conviction, where the party supposed to be murdered
was at the time of conviction alive, is undoubtedly 246
true. We are therefore called upon on account of there having been once perhaps in a century such an instance, to hold that no conviction can be had, unless the act of killing be proved by the the evidence of one or more who saw it, or the dead body be found. Should this be done we should for the same reason where the dead body is found, hold that the crime of killing and the dis-
covery of the author, could not be established by cir- 247
cumstantial evidence. The danger in the latter case is fully equal, if not greater than in the former, and in the latter case a twofold evil would be almost necessarily the result, viz: "the escape of the guilty and punishment of the innocent." Past experience has shown that very many instances have occurred, in which hon-

est witnesses have testified positively to a fact which subsequent developments have shown not to have existed: verdicts have been the result of evidence given by
248 perjured witnesses. In either case we do not know whether the witness speaks the truth, but presume from the reasonableness of his statement, his deportment upon the stand and the fact that he is not contradicted, or in any way impeached that he has testified truly, and act accordingly. Although circumstantial evidence, may technically, in some respects be regarded as inferior or secondary in its character it is only so, when it appears that direct evidence is withheld, and then only for the
249 purpose of avoiding the suspicion, that would otherwise rest upon it, from the mere circumstance that attainable direct evidence is withheld. It has therefore sometimes been held that direct evidence should be first produced: both are certainly more conclusive than either.

Nevertheless, such evidence, is not in any sense, inferior to direct evidence. Many able jurists have held that a combination of circumstances so connected with
250 each other as to form a chain of evidentiary facts, are more convincing and less liable to suspicion, than what is ordinarily termed direct evidence.

To secure safety in the admistration of justice, care is taken in proportion as the controversy rises in importance, to guard against mistakes and injustice.

In criminal trials, the interest at stake being greater, the law has justly thrown around the accused, guards against erroneous conclusions to be drawn from evi-
251 dence, whether direct or circumstantial, which renders it necessary that a higher degree of certainty should be arrived at than in civil cases. No possible objection can be sustained to the admissibility of circumstantial evidence. No one upon judicial authority doubts its competency when a death has occurred, to prove not only that the person was killed without authority of law, but to identify the murderer.

Our limited intelligence alone, without the aid of wisdom derived from the experience of those by whom rules of evidence have been devised, affords abundant proof, that no rules of evidence adapted to the wants 248
of society, by the human mind, are infallible.

Differences of opinion are entertained as to whether direct or circumstantial evidence is least liable to error. A learned commentator says with great truth "Each have their peculiar advantages and characteristic dangers." To reject either under all circumstances as insufficient, would result in the clearest injustice. If fallible minds should reject all evidence not infallible, there would be an end to the administration of justice civil 249
or criminal. Necessity has forced upon us rules of evidence, and the protection of civil life is the highest object of our penal laws: and that to a great extent is accomplished by a dread of punishment, and notwithstading the consequences to the accused are incalculably serious, yet if the *corpus delicti* be established by circumstances, which come up to the test of proof so strong and intense as to convince the understanding and conscience of a jury of the full certainty of death, though 250
the dead body be not found, I am unable to discover upon what principle of justice a court can refuse to pronounce judgment upon the verdict. 3d Geenleaf Ev. p. 32, § 30.

Mr. Wills in his valuable treatise upon circumstantial evidence says, that to require the production of the dead body, in all cases would be unreasonable and lead to absurdity and injustice, and that the death may be inferred from such strong and unqestionable circum- 251
stances of presumption, as render it reasonably certain and leave no ground for reasonable doubt. Wills on Ev. 2, 203. Were it not so says Bentham, a murderer, to secure himself with impunity, would have no more to do, but to consume or decompose the body, by fire or lime, or any other known chemical menstrua, or to sink it in an unfathomable part of the sea. 3d Benth.

jud. Ev. 243. Justice Story in the case of the United
252 States vs. Gilbert and others, 2d Sumner 19, 27, said of the rule contended for by the counsel for the prisoner, "it certainly cannot be admitted as correct in point "of common reason or of law, unless courts of justice "are to establish a positive rule to screen persons from "punishment, who may be guilty of the most flagitious "crimes. In cases upon the high seas the body is rarely "if ever found, and a more complete encouragement and "protection for the worst of offenders could not be in-
253 "vented than a rule of this strictness; it would amount "to a universal condonation of all murders committed "on the high seas."

The defendant's child at the time of his trial had been missing over eleven years, under circumstances that fully justified the inference that he had put it to death, and sunk its body and that of its mother in Cayuga Lake. Its clothes with those of its mother were pawned by him at Chicago, soon after the child
254 and mother were missing, under the assumed name of James H. Revilee: he then said they had died on Illinois river south of Chicago. The party to whom they were pawned, not hearing from him opened the trunk containing the clothes, and found in it cards inscribed Edward H. Rulloff, and on a separate paper, these words "Oh that dreadful hour." Also a lock of hair labeled either Harriet's or Mary's hair—the witness thought Harriet's. The strong force of circumstances
255 against him pressed him to the proof of his assertion that his child had died in Illinois, or that it was seen after the time it was missing. He made no effort to do either, but reposed himself entirely upon the inability of the prosecution to produce the dead body of his child.

I see no ground for interfering with the verdict.

SUPREME COURT.

THE PEOPLE
Agt.
EDWARD H. RULLOFF.

OPINION.

D. S. Dickinson for the people, Joshua A. Spencer for 256
the defendant. Balcom J. dissenting. The defendant was convicted of the murder of his infant daughter at a Circuit Court held in the county of Tioga in October 1856. He now moves for a new trial upon a bill of exceptions. It is claimed on the part of the defendant that the judge who presided on the trial, erred in refusing to instruct that the defendant could not be convicted of murder for the reason that there was no di- 257
rect evidence of the death or murder of his infant daughter, and as charging that the jury might infer, presume and find without direct proof the death and murder of the infant daughter.

The proof shows that the defendant's infant daughter and its mother disappeared very mysteriously from the defendant's residence in Tompkins county, in June 1845, and that neither of them has since been found or heard of, although the most dilig nt search and dili- 258
gent inquiry have been made for that purpose by the people of Tompkins county, and the relations of the absent daughter and mother on the mother's side. The defendant's conduct before and at the time the daughter and its mother disappeared from his house, and subsequently thereto, was such as to create a very strong suspicion that they are both dead, and that the defendant murdered them, and from such conduct and other facts and circumstances disclosed by the evidence in the
case, the jury have found that the defendant is guilty 259
of the crime of murdering his daughter, for which only he was tried. The evidence is such that it is barely possible, though highly improbable that the defendant's daughter is still alive. It is however so strong against

the defendant on every point, which it was necessary for the people to establish to show him guilty, that if a conviction for murder should be allowed in any case, without certain evidence that the person supposed to
260 be murdered is dead, we ought not to disturb the finding of the jury that he is guilty. Should a conviction for murder be permitted in any case, without direct and certain evidence that the person is dead, whom it is supposed has been murdered, is the only question presented for our consideration in this case.

It is settled both upon principle and authority that the dead body of the murde ed person need not always be found to authorize a conviction of the accused. Proof
261 that the prisoner threw a person overboard from a vessel at sea, under such circumstances that it was impossible for him to escape drowning, has been held sufficient evidence of the death of the person so thrown overboard to warrant a conviction of the prisoner, without finding the dead body; so proof that the prisoner had cast a person into a blazing furnace from which he could not escape the heat thereof being sufficient to entirely consume the body, would render it un-
262 necessary for the prosecutor to give evidence of the finding of the dead body of the person thus destroyed. The evidence in such cases being direct and certain, that the absent or missing person is dead establishes the basis of the *corpus delicti*, and then whether the throwing the person into the sea, or casting him into a blazing furnace was murder, or manslaughter, or done in self defence, may be inferred from circumstances. The rule laid down by Lord Hale, was that he "never
263 would convict any person of murder or manslaughter unless the fact be proved to be done or at least the body found dead," and judges have seldom violated this rule without committing judicial murder. It is not to be denied that innocent persons have been convicted of murder when the dead bodies of the murdered persons were found, but this fact should admonish us against

relaxing Lord Hale's rule, instead of inducing us to sustain a conviction where, conceding that all the witnesses whose testimony is relied upon, to establish the 264
death of the absent person, supposed to be murdered, have told the truth the whole truth and nothing but the truth and still it be possible that such person is living. I cannot concur in establishing the doctrine that human life may be taken for an alleged murder when the conclusion that a murder has been committed, is drawn from the sudden and unaccountable disappearance and long continued absence of the person supposed to be murdered, or from other circumstances which may all 265
be true, and yet no homicide have been committed by any person. The evidence that the person whom it is alleged has been murdered is dead must be certain, and it must be such as to leave no room for the existence of any doubt whatever that such person is dead before a conviction for the murder of such person can be safely permitted. It will not do to presume from circumstances that an absent person is dead, and then build a further presumption upon it, that such person has been 266
murdered. Persons accused of murder must be proved to be guilty by certain and reliable evidence before they can be lawfully executed. The case must be such as to exclude to a moral certainty, every other hypothesis but that of the guilt of the party accused. The case does not do this when there is the least uncertainty as to whether the person alleged to be murdered is dead. It is infinitely better for society that guilty persons should sometimes escape deserved punishment than for 267
the courts to establish a precedent that may be used to deprive innocent persons of life.

I cannot concur in sustaining the verdict in this case, because the evidence is such that it is possible that the defendant's daughter may be living. That it is extremely improbable that she is living will not do. The evidence must be *certain* that she is dead, before the de-

fendant can be lawfully convicted. I think the judge
268 should have instructed the jury to acquit the defendant, and that for his refusal to do so the verdict should be set aside, and a new trial granted to the defendant, to be had at the Tioga circuit.