IN THE SUPREME COURT.

THE PEOPLE

OF THE

STATE OF NEW YORK

vs.

GEORGE E. GORDON.

CLOSING ARGUMENT to the jury, delivered by HENRY SMITH, at the Schoharie Circuit, May 3d and 4th, 1866. Reported by P. DEMING, Stenographer.

ALBANY:
WEED, PARSONS AND COMPANY, PRINTERS.
1866.

ARGUMENT.

IF THE COURT PLEASE —

GENTLEMEN: The little village of West Albany was startled on the morning of the 17th of September, 1864, by the terrific announcement that a murder had been committed there. OWEN THOMPSON, a resident of the city of New York, a man forty years of age, or about that, a generous, genial, amiable man, who had been for years in the habit of visiting West Albany in carrying on the avocation of a cattle dealer, had that morning been found lying in one of the alleys of the yards at MCKEON'S in an insensible condition. He was found lying near the gate, — to which I shall refer your attention by and by — and all around him upon the sand, the soft dry sand on which he lay, was, not the trampling of footsteps as the learned counsel has said, but there were marks of the scratching and the digging by the hands and by the feet of this man, who had lain there through that dreadful night in an insensible condition, struggling in almost the last agonies of death; his skull crushed; his body covered as with the moistening of the blood and then by the sand which by that means adhered to it; his eye bulged out from its socket; his face covered with the thick coating of sand that stuck to the coagulated blood; and all around him, on the fence, on the gate, on the latch of the gate and near the latch, were the marks of this man's blood that had been put on there by his hands, while he was struggling to raise himself up. With the swiftness of lightning the news of this horrid crime was spread throughout this whole country. Not only the millions of people of the State of New York, but of this land

and continent, have heard of this terrible tragedy, and are waiting to hear the result of this investigation.

Some time elapsed before any direct clue was obtained by which evidence could be traced to develop the guilt of the man who had committed this dreadful crime. But at length, by a circumstance that seems almost trifling, the fact was proved, had it needed proof, that the power that fixed the stars in the sky, the power that created this beautiful valley, that raised these hills and caused the springs to gush from their sides and the little rivulets to run down, that same power that watches the smallest of these created things, that that power sees to it always, that sooner or later, the truth is developed and justice done.

GEORGE E. GORDON, this defendant, in the course of time, was charged with the murder of OWEN THOMPSON. After an examination, as the testimony shows, in the police court, the case came before the grand jury of the county of Albany, and he was indicted for the murder of OWEN THOMPSON. It appeared that this was not the only crime committed, for THOMPSON was not only murdered but robbed. GORDON was indicted for the graver crime because it covered the other. This allusion to the two-fold nature of the crime here, is only for the purpose of saying that whoever committed the one crime committed the other; that whoever robbed OWEN THOMPSON of his money took his life; and whoever took his life robbed him of his money. To remember this may aid us in investigating the question by and by.

As has been said by the learned counsel who preceded me, after this man was indicted he was arraigned before the Court of Oyer and Terminer, at Albany, the highest criminal court in the State, on the charge of murder, and put upon his trial and convicted. I do not allude to this conviction to prejudice this defendant, but merely because I wish to give the history of the proceedings which took place subsequently, up to the time a new trial was awarded. When a new trial had been awarded, such coincidences had occurred that I happened to be placed in the position of a public

officer, where it was my duty to investigate this charge against GEORGE E. GORDON, and ascertain whether, in my judgment, the evidence was such as to call for his being tried again upon this charge of murder; whether any principles of law had been settled by the higher court, which would materially change, in any important aspect, the question before submitted to the jury. I trust I need not tell you, gentlemen, that I undertook to discharge that duty with fidelity and faithfulness. I never had seen GEORGE E. GORDON but once in my life, and that was when he was first brought into court upon this charge. I had no personal knowledge of the man; I had no feeling, or passion, or bias, or prejudice against him.

Such proceedings were had that this case was again brought to trial at the February Oyer and Terminer in the county of Albany. I allude to this now in its order, only to say, that it was not my fault that GEORGE E. GORDON was not then tried. The learned counsel who has advocated the cause of the prisoner [MARTIN I. TOWNSEND, Esq., of Troy] has alluded to the fact that the law contemplates that ordinarily a man shall be tried by his own neighbors and in his own neighborhood. In this case *I* was willing that the defendant should be tried in his own neighborhood and by his own neighbors. It will not be imputed to *me* by the other side, nor by any one, will it be said that I did not devote myself with zeal at least, and with what little ability I could command, to organize a jury to try this case in Albany county. But upon application of the defendant such proceedings were had that the place of trial was changed, and when they came to select a county in which this case should be tried, I was quite willing they should select my own native county, Schoharie. It is a trite saying that a man is never a prophet in his own land. I did not expect, as the counsel seems to suppose, that I should gain any advantage as against this defendant by coming here. In coming to the county of Schoharie to try this case, I knew that I came not only among those who knew me as born and reared among them, but among men who,

if called to sit upon a jury, could, from their knowledge and intelligence, be relied upon to judge fairly of the evidence and of what the counsel or myself might say in this case. And I knew more than that, and what was especially gratifying to me, and that is, that while they would feel deeply and earnestly the terrible question involved in this case, the momentous question which a jury must decide, I knew that if I came to the county of Schoharie a jury could be found who would have no bias, no prejudice against this defendant. I knew, too, that we would have a jury who would realize in all its awful reality the fact that the defendant's life was involved in the issue they were to try. And while I appreciated that, I knew that the same jury would, at the same time, be just as faithful, just as perfect, in realizing, appreciating and discharging the duties they owed to the State, to their country and to civilization, as any jury that could be obtained. I knew that we should have a jury who would understand that while on the one hand the life of GEORGE E. GORDON is involved in this issue, on the other, the safety and the security of our lives, our homes, our families, our government, everything that a man should hold dear and sacred, is involved. I knew that you would appreciate, and appreciating would act upon the conviction that all we have, that all we enjoy, is only secured to us from the vagabonds, loafers and criminals of community by the law of the land, that what secures a man's money as his own, his property as his own, his possession, and saves him from the hand of the assassin, is the law of the land. I knew that when you bethought yourselves of these things you would stand indifferent in determining this case, appreciating the great interest involved in it, and devoting the entire energies of your minds to ascertain what the real truth is. *That* is what *I want*, if I know my own heart, if I justly appreciate the convictions that actuate me. I would take only that part in the case in which I have taken thus far in this respect. I wish to present to your minds the evidence as it is, and then to draw from it such argument as may tend to develop the truth.

In regard to you, gentlemen, I knew more than I have said. I knew that you would not only be impartial, but that you would give the attention that was necessary to inform yourselves, and enable you to act intelligently upon this question. It is due you, that I should say, and it is right that your fellow citizens should know, as this protracted trial is drawing to a close, that in my experience in the trial of causes, I have never known a case requiring attention even for a single day before, where the jury have apparently given such constant and devoted attention to the evidence, as you have given in this trial.

The learned counsel, who has spoken at considerable length and with distinguished ability, has seen fit to allude to the fact that I came *here*, where I was known, and says that he is a stranger here. The course of his argument abundantly proved that he was a stranger here. The manner in which he has addressed you, and the style of reasoning that he has employed, has proved, to my entire satisfaction, that he is a stranger here and does not know you. For if he had known you, if he had appreciated, as he ought to have done, the motives under which you are acting, and the degree of intelligence which you bring to the decision of this case, he would not have resorted to the style of reasoning which he has adopted. He seems to me to have made a most extraordinary speech upon the trial of this cause, the most extraordinary ever delivered upon the trial of any cause, so far as my knowledge extends. He has not been content with resting his case upon bold and unjustifiable assertions, nor with assailing judges, jurors and counsel; not even the murdered man has been spared. He told you in the opening of his argument, of the style in which I would argue this cause. His generosity, for he is a generous man, would prompt him to speak in as high terms of praise of me, at any time, as I deserve, but when he went on with that compliment upon my powers as an advocate, and what might be expected of me in this case, it was not uttered for compliment. That was not the motive of the astute and ingenious counsel. He

spoke under the impression that he had before him a jury that could be so impressed by that style of argument, that when I came to speak of the overwhelming facts in this case, which have been sworn to upon the witness' stand, the facts which have been gathering, and twining, and coiling closer and closer about this defendant, as the case has proceeded, until they fix upon him the blood of OWEN THOMPSON, beyond even the possibility of a doubt, he intended that you should be guarded against what might be said in presenting and combining this evidence, by causing you to ascribe it all to the ingenuity, invention, and skillful argument of the counsel on the part of the prosecution. I have no such power as he intimates. I lay claim to no capacity above the ordinary average of lawyers, to influence the minds of my hearers. If I had the power to exert an undue influence upon a jury, I would not use it here. If you will watch me during the course of this argument, you will not find that I shall differ in a single instance, from the evidence presented here. You will find that I shall make no assault upon this defendant, tending to influence your minds against him, beyond what is justified by the evidence. You will hear from me no unkind allusion.

When the counsel was through talking of me, and trying to influence you so that you would be guarded against the manner of my speech, as he would have you believe, then, as if he could carry the case by naked, bold, unproved assertions, he assaults the witnesses. Some of them he calls dirty, perjured villains, or one or two of them at least, and assumes to drive ten men and one woman who were witnesses here out of this case by using these opprobrious epithets. And when he was through with wiping out these witnesses, he assaults the poor dead THOMPSON, whose bones are crumbling to-day beneath the sod, brought to an untimely end, as I will show you, by the murderous hand of this defendant. He assails him without one word of proof, without one single thing to justify it. That man, the dead THOMPSON, is brought up here, and charged with being "steeped with

liquor, by force of the customs of the times." There was no evidence to justify the charge — not one word. But it was not enough, it seemed, for him to berate the living, to assail these score of witnesses in the manner he has, and to defame the memory of the dead THOMPSON: the Supreme Court of New York, the Judge who presided, who held the scales of justice in his hands at the Oyer and Terminer, RUFUS W. PECKHAM, Judge of the Supreme Court by your selection, has been charged with improper and hasty proceedings when this man was on trial for murder; and it has been said that there was no trial. Not only that, but the very counsel who was assigned by the court for this defendant, when this defendant was so manifestly covered with the blood, when you could see it in every lineament of his face, when it was dripping from his hands, covered with that blood, by the proof in this case, so that the most daring and intrepid counsel shrunk from his defense as hopeless, the counsel who, under such circumstances, was assigned by the court to defend the prisoner, has been assailed here as not having done his duty. This is a most extraordinary way; it is a most unusual way of approaching the question — the solemn, the awful question, as to whether THOMPSON was killed by the hand of GEORGE E. GORDON. I speak of these things only to remind you of them, and to say, that this general overslough, unacceptable in any argument, in any place, evinced very clearly that the counsel, learned, skillful and ingenious as he is, felt the crushing weight of the testimony in this case, and the necessity, if possible, of tearing down the temple, of breaking the scales of justice, of destroying the understanding of the jury, of wiping out the opposing counsel, and the history of this case. But there is one part of that history which he cannot efface from your minds, and *that* is, the sworn testimony here against GEORGE E. GORDON. His argument, or speech, was manifestly for that purpose. I know you too well to suspect for a single moment that any such bold and unexampled attempt can influence you in favor of the defendant.

There was another consideration urged by the counsel, to which I will here allude. He said that GEORGE E. GORDON is the *only child* of JOHN GORDON. Suppose he is, what then? We all pity JOHN GORDON, that he has such an only child. We all pity GEORGE E. GORDON, because he has not proved by his career that he was a more dutiful son. But what has that to do with this case? The question you are to try is, did GEORGE E. GORDON strike the blows that resulted in the death of OWEN THOMPSON? Did GEORGE E. GORDON rob OWEN THOMPSON of his money? If he did, if, when the mantle of darkness settled down over that village, in the stillness of that night, he beguiled OWEN THOMPSON from that house into the remote part of those yards, and there took his life, the life of that man who had never done him a wrong, toward whom he had no feeling of anger even as the excuse for the deed, without *any* excuse except the sordid desire for money; if he did that, whatever sympathy you may feel for one guilty of so foul a crime, your duty is yet plain. The right in that case is manifest, and the verdict must be pronounced. On the other hand, if GEORGE E. GORDON is not the man who committed this crime, though he may stand here without relative or friend, without counsel or any one to speak a word in his favor, he should be acquitted of the charge, and sent forth fully exempted from the imputations against him. Therefore, what is this matter to you, that he is an only child? What bearing has it upon this case, that his father is ruined by the crime of a son? We all feel for his father. And if it was merely GEORGE E. GORDON that is involved in this case, I should be in favor of wrenching from the lock of the prison door the broken key that was in it a short time ago, and turning him out, putting a mark upon him as upon the first murderer.* But this is a question of law, a

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*Allusion is here made by the counsel to the fact that the prisoner, upon this occasion, was not brought into court until after considerable delay, the officer having broken the key in the lock in attempting to open the door of the jail where GORDON was confined.

question whether government and order shall be maintained and life shall be sacredly protected.

Without further introduction, I now proceed directly to a consideration of the evidence in this case. On Wednesday, the 14th of September, 1864, late in the afternoon of that day, and after banking hours, OWEN THOMPSON went to the broker's office of GEORGE MORFORD, in the City of New York, for the purpose of disposing of some drafts and uncurrent money. He transacted his business with HENRY A. MCLAREN, chief clerk of Mr. MORFORD, who has been called here as a witness and has given his testimony. He has identified the check here, as the one he gave THOMPSON, and says the filling up and the signature are in his, MCLAREN'S, handwriting. The check, which is in evidence, bears date September 14th, 1864, and is drawn on the Park Bank for seven hundred and fifty-nine dollars ($759), and is signed CHAS. A. MORFORD. The check was drawn in blank, that is so as to be transferred without indorsement; because THOMPSON was anxious to get away early in the morning, and it would facilitate his getting the money to have it drawn in this form. Early in the morning of the day succeeding the 14th of September, some one called at the Park Bank with this check, upon which he drew the money. We say it was OWEN THOMPSON. As to the evidence upon that point and what it proves, the counsel has seen fit to indulge in some criticism. He says there is a *possibility* that somebody else presented the check. Now we do not try suits at law upon possibilities. The defendant is *not* entitled to every *possible* doubt. Few things in this world can be shown beyond a *possible* doubt. The law is — and the counsel knew it was the law, although he repeated "a *possible* doubt" a hundred times over in the course of his argument — the law is, that it must be shown beyond a *reasonable* doubt. Not that there may not be a possibility that the thing may not be so, but that it shall be shown beyond a reasonable doubt; so that a fair conviction may be based

upon the evidence. It should be upon such conviction of the mind upon a question, that you would be willing to act upon it in a matter of importance to yourselves. Now how does this apply to the case in hand? On that afternoon, that check, in this form, is in the possession of OWEN THOMPSON, obtained in that particular form for the purpose of presenting it at the bank. That check is so presented by some man next morning. The legal presumption is, that THOMPSON in fact presented the check. That is, this is a presumption on which you would be willing to act in matters of importance to yourselves. When this check is presented at the bank, PERKINS swears, not that he has no recollection about it, as counsel have said; not that he has no recollection whether THOMPSON asked for small bills or not; his testimony is, that *he has* recollection. He cannot be positive, but according to his best recollection, he paid that check in one five hundred dollar greenback and two one hundred dollar bills on the Park Bank, and enough in smaller bills to make up the seven hundred and fifty-nine dollars. The counsel for the defendant undertakes to shake this testimony, and thinks he got the witness to say that he was not positive at all about this matter, and that he might have paid the full amount in small bills. The counsel asked the witness whether, if the person who presented the check asked him to pay it in small bills he paid it as requested; and the witness replied that in all probability he would pay a check in such bills as might be requested; but speaking from his best recollection, he claims that he *did pay it* in one five hundred dollar greenback, two one hundred dollar bills on the Park Bank, and small bills to make up the balance. This was more than an ordinary business transaction. The check was in an unusual form, and MORFORD was not in the habit of drawing checks in that manner. When a check of that unusual form was presented to the cashier, it attracted his attention. He gave it a more careful examination than was ordinary, when checks were presented, in order to ascertain whether it was genuine and all right. It was only a few days after

this, that some friend of OWEN THOMPSON sought out this bank, and inquired of PERKINS how he had paid this check. PERKINS declares before you, on his oath (and his truthfulness you will not question), he declares to you on his oath, that then, when his attention was called to this circumstance, he was enabled to recollect the denomination of the bills. Afterwards the officers from Albany called upon him, and they obtained the same information which he had given the former inquirer, and which he has disclosed upon the stand. I ought to have said before this point in my argument, that the police officers have not escaped the criticism of the counsel, as if they had done something wrong in attempting to discover the murderer of OWEN THOMPSON.

Now it appears that on Thursday the 15th of September, or on the Tuesday preceding, THOMPSON must have had in his possession several thousand dollars. In addition to the testimony of PERKINS, we have that of PATRICK BURNS, the partner of THOMPSON, upon this point. BURNS swears that on Tuesday he let THOMPSON have orders and a certificate of deposit, amounting to three thousand four hundred and forty-four dollars, besides sums to be collected by him. Now applying the doctrine of the counsel, that in law we must prove a thing beyond a *possible* doubt, there is a possibility that THOMPSON did not bring this money with him to Albany; there is a possibility that he lost it. But applying the rule of law, rather than the theory of the counsel, and we may say that we have shown beyond reasonable doubt, that THOMPSON had at least as large an amount of money with him, as is necessary for the purposes of this case. Proving that money in the possession of THOMPSON, that he had it, with the purpose of coming to Albany, is sufficient for the purposes of this trial; and that we have shown. From this and the subsequent circumstances it is sufficiently established, that he had this money when he came to West Albany. But, says the counsel, it is not shown at what time he arrived in West Albany. Is that necessary? We prove that he was there, and that on the Tuesday evening before, he was in New York, with

papers in his hands, on which the money could not be drawn until the next morning. We show that he had ample time to draw that money next morning, and reach West Albany at the time he was first seen there. He was at McKeon's through the day on Friday. I will not trace him through the history of that day in detail, at this time, but will reserve that for another branch of the case. On Saturday morning he was found in an unconscious state, with his skull battered to pieces, the top of his head being literally knocked off, holes broken through the skull to the brain, and the brain oozing out through them, a murdered man. The testimony establishes the position that he was there with a large amount of money in his possession. I have already alluded, in general terms, to the fact that the crime committed was two-fold, that he was both murdered and robbed. We prove by his being found there, in that alley, in that condition, with his pockets rifled of their contents, that the two crimes were committed — murder and robbery. These two crimes are thus established. I never knew that they were doubted before, but they seem to be disputed on this trial.

The next question that arises is, who committed these crimes? Or rather the question for you to decide is, did George E. Gordon, this defendant, commit these crimes? Did he rob Owen Thompson? Did he murder Owen Thompson? If he is proven guilty of one, that proves him guilty of the other. If it was a case of robbery, it was a case of murder. No one will dispute that whoever took the money of this man, also took his life.

About nine o'clock on the morning of the 16th of October, Barnabas McKeon testifies, he saw Gordon. And I should say just a word here in regard to the appearance and character of this witness McKeon, he seemed like a respectable man upon the stand, and there was nothing to justify the insinuations of the opposing counsel. He did not look nor act like a man that would swear falsely, like one who would commit perjury, one of the gravest crimes in the world, for the sake of bringing George E. Gordon to

the gallows. But the counsel seems to think he would do this, although he does not say it in just so many words. BARNABAS MCKEON, in full view of the important issue at stake, and with the obligations of the oath upon him, testifies that at about nine o'clock on the morning of the 16th of September a young man came to him where he was standing near the railroad track at West Albany, and told him that he expected some cattle in from Saratoga county, that they were to be driven in by his uncle, and his recollection is, that the young man said his uncle's name was MCKNIGHT. How does the counsel meet this? He tries to shake your confidence in the witness. Is there anything that excites or gives just occasion to a doubt about his testimony? Is there anything in his appearance that would induce any one of you to suspect that he has testified to a single word that is not true, against this defendant? Has he any inducement to do so? Has any possible motive been shown why he should desire to testify against GORDON? Is it not rather reasonable to infer, that prompted by the sympathy that moves every heart, he would not testify to a single word against the prisoner, except so far as he felt bound to do so by his oath and his conscience? He tells you that the young man said he had some cattle coming in from the country, and he thinks he said they were coming from Saratoga county, and that the name of the man who was to bring them was MCKNIGHT.

Then we come to the testimony of A. C. JACKSON the colored man, in reference to the appearance of this young man there in the morning. The counsel in alluding to this witness seemed inclined to make an abolition speech. Mr. JACKSON is a very decent looking and appearing man certainly, and the counsel had no occasion in anything that appeared in the witness, to treat the subject as he did. I will show you by and by, why he should attempt to bring upon this witness the imputation of false swearing. JACKSON says that about nine o'clock in the morning of the 16th, he saw this young man and another young man standing together on the steps of the hotel. This is the

first intimation we have, then, as given by these two witnesses, with reference to this young man, as seen at West Albany on the 16th. About ten o'clock, or half-past ten, of that morning, he applies to SEIVER, the bar-keeper at MCKEON'S for the purpose of procuring a yard for the cattle that he said were coming. Mr. SEIVER swears to that. Was there anything in Mr. SEIVER to excite suspicion? Yet the learned counsel took occasion to say, in this county, where he does not know the people, what the people here thought about SEIVER. How he knew, or what he knew, as to the people's opinion about SEIVER, I have no knowledge, and I know you do not care, that is no part of this case; there was no propriety in mentioning it, and the counsel had the manliness to acknowledge that such is the fact, when his attention was called to it. SEIVER referred the young man, in reference to the cattle yard, to ROBERT JONES, the keeper of the yards, and it appears in evidence that he applied to him for a yard for these cattle, which were coming in as he represented from the county of Saratoga, and were to be driven in by his uncle MCKNIGHT. [The counsel at this point in his argument, exhibited a map to the jury, and pointed out upon it the location of the cattle yards, the roads, the hotel and the stoop where the young man was seen by JACKSON, and the barn where ROBERT JONES was when the young man applied to him for a cattle yard, and explained that the map was made upon a scale of one inch to twenty feet.]

You will remember that ROBERT JONES testified that he told the young man that he could have yard No. 14. Now you will observe upon this map which I have exhibited, that yard No. 14 is represented by a parallelogram one inch wide and two and a quarter inches long. You need to remember this in judging of the conduct of the young man afterward when he pretends that this yard is too large. He applied for this yard, or a yard, to ROBERT JONES, you will recollect. This was about half past ten o'clock in the morning. Now observe how unfair the argument of counsel

was in regard to this portion of the evidence. The conduct of this young man *was not* ordinary, such as would be expected in any similar transaction. The next we hear about the young man's applying for a cattle yard is, that at five o'clock in the afternoon of that day, he tells JONES that yard No. 14 is too large for his purpose. If he was an honest man and not a robber and murderer, if he expected eighteen head of cattle there, he would have ascertained in regard to the yard being unsatisfactory before five o'clock that afternoon. And then JONES, in the barn, sees GORDON out by the fence (I will show you by and by that this was GORDON), GORDON calls to him to come out there, and then GORDON tells him that yard No. 14 is too large, and that his cattle will not show well in it. Then JONES says; "You may have lot No. 16," and he says that is too low. Then JONES walks around the corner with him and shows him lot No. 31, and tells him he can have that. GORDON says there are too many weeds in that, and asks: "Have you got a lot farther up?" JONES says: "There is yard No. 35," and tells him he can have that. Now you observe on the map that the yard No. 35 is four times as large as No. 14, which GORDON complained of as being too large. And yet GORDON selects yard No. 35 as the one suited to his purpose. He says the cattle are coming in over the Shaker road from Saratoga county, and it will be more convenient to put them into this yard. Has any man any doubt that the person who selected yard No. 35 under these circumstances, had some illegal, some criminal purpose in his heart? Is it possible for a human mind to have any doubt upon this point? Why did he complain that yard 14 was too large, that yard 16 was too low, that yard 31 was too weedy, and then select yard 35, which was four times as large as yard 14? It was because he wanted to get "farther up" out of sight of the house, where he could beguile this man, and take his life without danger from being in too public a place. Is there, can there have been, any truth in the pretenses, that he made use of about the yards? Why the cattle did not come at all, did they? No;

no cattle arrived, no McKnight came as he pretended was to have been the case. Nothing of the kind took place. Hence it is manifest, that when Gordon came there that morning, and applied for a yard, he had some criminal intent in his heart. He may not then have had it in his mind to take the life of Owen Thompson, but he had some criminal purpose when he came there with such a contrivance, with that lie on his tongue. In the forenoon of that day, about eleven o'clock, he is in conversation at the barn with Jonathan Hoag, Robert Jones and Thomas Welch. Jones and Welch have given their testimony of the conversation that took place. The counsel would have it that Thomas Welch is a dirty, perjured villian, and that Robert Jones is not much better. Is there anything in the character or history of these men to justify such a charge against them? Has any such thing appeared? The counsel for the defendant had the whole lives of these witnesses open before them. They had the right to call persons here to speak of them, if there was a word to be said in derogation of their character. Is there any motive to induce them to add one word to the weight of their evidence against the prisoner? It appears by this testimony, that in this conversation at the barn, there was discussion about cattle. You will remember the testimony probably. Hoag was a sheep dealer. He had been talking some about buying these cattle, it seemed, and Thompson had been complaining that he was interfering, and saying that he being a dealer in sheep, ought not to interfere in his own negotiation with Gordon, about cattle. Hoag finally says that he will not interfere. Some further conversation takes place, and the inquiry is raised, and Thompson says he has money to pay for his cattle; that he carries enough usually to pay for a car load or two car loads of cattle. This might be some twenty-four or twenty-eight hundred dollars. He makes this statement in the presence of Gordon. Having laid his scheme, having obtained yard 14, Gordon then begins to consider the details of his plan. He leaves a part of his plan open; not settled upon until five o'clock.

He then looks around to fix upon a victim. Here is this OWEN THOMPSON, this jolly clever old drover, who he hears has from twenty-four to twenty-eight hundred dollars with him. And then you will remember — and I allude to it as important in the case, and shall wish to refer to it again when I speak of the question of identity — you will remember that then in that conversation, something was said about a bounty. WELCH says he wants a thousand dollars bounty if he enlists. Some one says that he can get it by going to Troy to enlist. GORDON says that he has fixed *his* figures higher than that, that he wants to get five thousand dollars, because he had been in the army. Then some one asked GORDON about the army, whether there is not a dread of going into battle, and GORDON said there was at first, but that after a while one became accustomed to it; that there were so many that went into battle together, that each thought that it would not be himself that would be killed. He said that he did not mind stepping on a dead body any more than if it was an old log. That was a fit expression to be made by a man who was contemplating murder. It was a state of mind such as you would expect to find in a man who was perhaps then watching THOMPSON, to see whether he should be the victim. He says he does not mind stepping on a dead body any more than on an old log. Now, does the witness manufacture that expression as the counsel has insinuated? Is there any motive, do you think, to influence the witness to do this? Do you think a man like ROBERT JONES — you saw the apparent truthfulness with which he spoke — do you think a plain, simple man like him would manufacture testimony of this sort? No, gentlemen. It is just as certain as anything on earth, that GEORGE E. GORDON said, at that time, to this man, that he did not mind any more about trampling upon a dead body than he did standing on an old log; just as certain as it is that GORDON is here this minute, just as certain as it is that I am talking to you. It is in harmony with the circumstances that he should say that, because he had been in the army. It was in harmony

because he did not care for the dead or the living, for man or for woman or children, for father-in-law or for wife or for child.

About dinner time, GENTER says he saw GORDON by the door that leads from the piazza into the bar-room of the hotel. At about half-past one o'clock, in a yard where there were a pair of oxen that GENTER and MARTIN, who were partners, had sold, and near where they had other cattle to sell, GENTER, MARTIN and GORDON were assembled. While they were there, they were talking about buying and selling, and the price of cattle. It was during this conversation that GORDON and GENTER first attracted each other's attention, and GORDON asked GENTER if he had not seen him somewhere behind a bar. THOMPSON you will remember was also present at this conversation. After this conversation, GENTER and THOMPSON and GORDON went to the house. At about half-past two o'clock they were sitting on the piazza or steps of the hotel, GENTER and THOMPSON were leaning their chairs against the side of the house, and GORDON was leaning against a post and facing them. They remained here in conversation about cattle, and buying and selling, until about four o'clock. GENTER'S business was to sell cattle to THOMPSON. It was during this conversation that THOMPSON said he would buy the cattle of GENTER if he had others to put with them, and that he should want them if he bought those of the young man (GORDON) that were expected in from Saratoga. And it was here, you will remember, that THOMPSON counted out two hundred and forty dollars, and offered it to GENTER for the cattle he had to sell. It was during the conversation in the yard, you will remember, that GORDON asked GENTER if he had not seen him somewhere behind a bar. GENTER swears that he asked that question, and MARTIN swears that he asked it. And yet the counsel for the defendant, without a word of evidence or one word against either of these men who testified as fairly as men ever did, the counsel does not hesitate to say that they swore falsely. He has nothing to sustain his charge of perjury,

except his own bold assertion. After the conversation at the yard, as I have said, they went to the house. And here, as THOMPSON was counting out the two hundred and forty dollars, whieh he offered to GENTER, GORDON had ample opportunity, as the testimony shows, to see THOMPSON'S money, and to judge whether he was a proper person to make the victim of this criminal scheme which he was contemplating. Between seven and eight o'clock this same evening, GORDON and THOMPSON were in the bar-room of the hotel, and were seen almost constantly together. It was at this time in the bar-room, as WELCH testifies, that there was a discussion in reference to a bet upon politics. SWEENEY was betting with some other person. Even SWEENEY has not escaped the insinuations of counsel. The counsel says, contemptuously, that he would like to have seen SWEENEY there putting up his money. Not content with reviling everybody in the case, from the bench down to the detective officers, who have discharged their duty in the matter in a praiseworthy manner, he assails SWEENEY who is mentioned here. But not to pause further to reply to the groundless insinuations of the counsel, I ask your attention to the fact, that when this betting was in progress, it appeared that SWEENEY had not money enough to compare with that which his opponent wanted to put up. Then it was that THOMPSON took out his pocket-book and laid it upon the counter, and offered to furnish two or three thousand dollars (the amount is differently stated by different witnesses) to enable SWEENEY to make the bet. It was at this time that GORDON stood near with his elbow on the counter, and his eye intent upon that money which he was coveting, and was determined to get hold of by resorting to murder as the means. But before this, at about half-past six o'clock, inquiry was made by GORDON, of SEIVER, as to what time they could have tea. They were told that they could have it at any time after half-past six o'clock. At about half-past seven o'clock THOMPSON and GORDON went into the dining room together. And this is proved by BRIDGET FLANNIGAN and AUGUSTUS JACKSON. The

learned counsel for the defendant, however, says their testimony upon this point cannot be true; that this Irish girl and this negro are both guilty of perjury, because one says he (GORDON) brought his hat into the dining room, and the other says he thinks he did not carry it there, but left it in another place. I will have occasion to show you how unjust such criticism is, how little a discrepancy of this kind should have to do with determining a case in the further progress of my argument.

About half-past seven o'clock, after they had come out from tea, these men, THOMPSON and GORDON, are seen sitting on a lounge together in the bar-room, side by side. MCMAHAN testifies that he saw them there, and that he proposed to THOMPSON to go to bed. THOMPSON declined going at that time. About eight o'clock or a little past eight o'clock, ROBERT JONES testifies, that he saw these men conversing together, GORDON and THOMPSON conversing together upon the steps of the hotel. Shortly after this, as proven by THOMAS WELCH, and corroborated by the testimony of other witnesses, so far as their testimony bears upon this point (and WELCH, it will be remembered, was watching this young man, because he had heard him say that he was expecting cattle to arrive, and WELCH desired to avoid the labor of taking care of them), THOMPSON was seen to leave GORDON for a moment, go to the table in the center of the bar-room, and speak to some person there, and then he and this man (GORDON) went out together from that house, to which THOMPSON never returned again conscious and alive. Going out under the watchful eye of this man, this man watching him as carefully as ever a cat watched a mouse, he was never seen again until he was brought in in an unconscious condition. This man, whom we have traced from nine o'clock in the morning until eight o'clock in the evening, was not seen next morning, nor did any cattle arrive for him. Now, gentlemen, is there any necessity of my arguing to twelve reasonable men, that the man who came there that morning at nine o'clock, who spoke about obtaining a cattle yard at

half-past ten o'clock, who discovered that THOMPSON had a large amount of money, the man who was with THOMPSON every moment from that time until he was murdered, except when he went to see about obtaining the cattle yard that would best suit his purpose, never out of hearing and reach of THOMPSON; is there even any propriety in my taking time to argue to you that the man who did this was the man who killed THOMPSON? Is there even any *possible* doubt upon that point, if we go so far as to apply the rule which the counsel has erroneously laid down? In rendering their decision granting a new trial in this case, the Court of Appeals say, that the circumstances render it highly probable, and the jury would have been justified in the presumption, that this man could be no other than the murderer of THOMPSON.

I will not detain you any further with detail of the evidence to-night. I know that, having listened to the elaborate argument of my learned friend during a session of five hours this afternoon, you must be weary, and I will not therefore trespass too far upon that feeling of patience which I know you are trying to preserve. I will delay further comment upon the facts of this case until morning. Then I will endeavor to show you that a conclusion may be reached in this case which shall be free from every possible doubt. I will then endeavor to show you, not only that there is testimony enough to convict this man of murder, but that there is a combination of circumstances, trains of evidence, any one of which is stronger than that which convicted MARY, the colored girl, of whom the learned counsel spoke, or the brothers BOONE to whom he alluded. I will show you evidence enough to convict half a dozen murderers. I will show you the testimony of ten unimpeached and unimpeachable witnesses who prove that this man was GEORGE E. GORDON. I will show you not one species of evidence but half a dozen, that prove his identity. I will show you evidence not consisting of blood stains, not subject to chemical tests, or agents, or reaction, but evidence which cannot

be removed by any process, and from which no chemist can save the prisoner, evidence of identity just as certain as is the evidence of our own existence. The testimony of those who saw him — I will show by well-settled authority that this testimony is sufficient alone to convict him of murder. And I will show you what sort of a man this was. Up to the day he obtained this money, he was a poor loafing, miserable, begging whelp, an outcast from his father's house, from the family to which he had allied himself by marriage, his heart steeled against every emotion of love and natural affection, deaf to the appeals of a wife who had loved him and had confided herself to him and trusted him, deaf to the appeals of the helpless babe, the first-born of his loins. Such was this man down to the day of this murder, thus depraved and hardened and begging for food. But immediately after the murder, we find him with his pockets lined with money, leading a life of extravagant and lavished expenditure, visiting the Falls, going to the State Fair, and boasting of his wealth. This class of evidence, as we find it in this case, would be sufficient to prove his identity with the murderer of THOMPSON, and to convict him. And then we shall add to this another kind of evidence. We shall ask him, "GEORGE GORDON, where was you on the night of this murder? Where was you on the *day* of this murder?" And I will show you that you are not to be satisfied with the testimony upon this point of the lying CLARK, with which the counsel has attempted to clear up this case. I will demonstrate to you that his story is as baseless and false as it is possible to conceive. The very fact that he avoids giving any circumstances which will afford an opportunity to test the truth of his story by calling other witnesses, those whom he *must have seen* on that day if he were telling the truth, is sufficient of itself to brand his statement as false. And you observed into what difficulties he plunged himself when I questioned him. The counsel tried to explain this away, by saying that I scared the witness. You perceived at once the true position of

this witness CLARK, and the bearing his testimony must have in this case. I will show you by authority that the very fact that this witness CLARK is brought here, at this point in the history of this trial, is overwhelming evidence in itself, of this man's guilt. The very fact that he now appears here for the first time, so long after this murder, is in itself very strong evidence of this man's guilt. The question still remains, where was GORDON on the night of that murder? Beside this I shall ask him, "GORDON where did you get that money?" The learned counsel says they cannot show that, and why? He says the mouth of the accused is closed, that he is not permitted to speak and tell where he got it. If his mouth *is* closed does that prevent their giving evidence upon that point? Somebody had that money before GORDON had it, and it passed from the possession of some other person or persons into his possession. *Their* mouths are not closed. Why are not they brought here to testify? In accordance with the rules of law I shall put these inquiries, and I know that you will hold that he must answer them by the evidence.

I shall also ask him, "GORDON, when you was charged with this murder, why did you not tell where you was when it was committed?" What would be the first answer of any honest man charged with wrong? If you, any of you, were charged with having perpetrated wrong in Albany last year, your first answer would be, "I was in Schoharie." GORDON was bound to answer that question as to where he was, and to speak truthfully if at all. Upon this point he told no consistent story. I will show you that to one he spoke of having been at Trenton Falls, to another of having been at Niagara, to another he said that he had not been in West Albany for three years, to another that he had been with GEORGE CLARK that night; and he spoke again of the place where he took tea that evening. I will show you that the question of doubt, if there is any about this question, is to be resolved against this prisoner, that is if he has made out upon this point, even a *doubtful* case. I will show you that if the defendant has made out a doubt

ful case on either of the points to which I have just alluded, the doubt must be resolved against him.

If the person who could go out in the night and follow a man against whom his anger was not excited, prompted only by cupidity, only by the desire to obtain money, if such an one can go out and dash out the brains of a man, and then, if, because it is hard to punish him, in view of the fact that he has a father, he is to be allowed to go unpunished by a jury of Schoharie county, then indeed the time has arrived when human life has ceased to be sacred or secure and when courts of justice are or no avail. I shall be able to satisfy your minds in regard to the guilt of this man, and as I think, to remove every possible doubt, so that your labors in coming to a conclusion will be easy. The testimony is so extended and has so much of detail in it, that it is quite reasonable, as the counsel claimed, that some considerable time should be occupied in developing the evidence in the case. I would have been glad if he had developed the evidence. I will bring before you the evidence in the order of the dates named, to refresh your minds, and to enable you to be sure that you have discharged your duty with fidelity, and satisfactorily to yourselves.

[The court here took a recess until morning.]

Refreshed by a night's rest, gentlemen, I hope that we may be able this morning to proceed with the investigation of the facts in this case with the intelligence and care, that the momentous question involved demands. I had gone so far with the evidence last evening as to show you that the young man who was with OWEN THOMPSON during Friday, the 16th of September, that that man, whoever he was, was seen at twenty minutes past eight o'clock that evening, crossing the threshold of that hotel as OWEN THOMPSON went out, and was murdered, and that whoever that man was, he was the murderer. I have shown you that the Court of Appeals say that the jury would be justified from the evidence in arriving at the conclusion, that he was the murderer. The remaining question, and the only question

I may say that has been seriously raised here, is, was GEORGE E. GORDON, this defendant, that man? Now, the first and most usual means of identity, in the experience of people, is the impression the person makes upon your mind when you see him. We cannot always tell why or give the reason, but the human mind and senses are so fashioned and developed, that when we look upon an object, it makes an impression upon the mind and senses, that lasts as long as memory and life last, unless our faculties are impaired. How that impression is produced, what particular quality it is that fixes it upon the mind, we may not be able to tell, but still we know the fact, we are sure of the identity of the person or thing when we see it again. You see a man's face, and when you see it again you recognize him as the same man. You may not be able to recollect, if asked, the color of his eyes or hair, or the form of any particular feature, and yet when you see him again, quick as a flash of lightning, almost with unerring certainty, you recognize the countenance. It does not require the authority of the books to convince you of this, for I can refer you to your own experience. How often in your whole lives have you been mistaken in reference to a countenance that you have thought you recognized? The learned counsel speaks as if it were a very common event to be mistaken in the identity of persons, and refers you to your own experience in support of his view. I do not think your experience accords with his statements. I am sure that it does not if your experience agrees with mine; and perhaps, I have had as much experience as any of you, in seeing new faces in jury boxes, and witnesses that were new to me in the courts in various parts of this State. If your experience agrees with mine, you will say, that it is very rare indeed, that this wonderful and unexplainable faculty of the mind, so acute in its perception as to discriminate the nicest shades of difference very rare indeed, that it is mistaken as to identity.

Now, on this fatal Friday, there is the concurring testimony of ten witnesses who were at West Albany, and who swear to the identity of GEORGE E. GORDON. I speak now

with reference simply to their testimony as to his identity, not taking into consideration at all the circumstances that tend to support that testimony. Taking it that they had been put upon the stand and could merely say, "that is the man I saw at West Albany on that Friday; I recognize that face, those features and that expression; that is the man;" although they had been unable to recognize a single article of his apparel or a single feature or characteristic that distinguishes him from the rest of mankind, yet the evidence of identity would have been overwhelming, unanswerable and conclusive. Although this is a charge of murder, although the human heart naturally sympathizes with the defendant, here is the evidence before you, the sworn testimony of ten witnesses, declaring on their oaths and conscience, their belief that this is the man. There is the testimony of BARNABAS MCKEON, ROBERT JONES, THOMAS WELCH, AUGUSTUS C. JACKSON, BRIDGET FLANNIGAN, JAMES D. GENTER, WILLIAM MARTIN, HUGH CARTON, ADAM SEIVER and MCMAHON. And unless this testimony is shaken in its credibility, or an *alibi* shown by testimony that shall be of a character to overbalance what is here produced, on this testimony alone, as I will show you by authority, this defendant stands convicted before you of this terrific crime. No matter though you may feel sympathy and be melting in tears of sorrow and your hearts swelling with emotions of pain, on your oaths you would be bound to declare, if you would fully discharge your duty, that the man who was with THOMPSON on that day was his murderer, that ten witnesses identify GEORGE E. GORDON as that man, and that therefore GEORGE E. GORDON was the murderer of OWEN THOMPSON. But the testimony of these witnesses has been criticised upon this point. Of some of them I will speak now, leaving what I have to say of the credibility of others to another part of my argument.

I am not aware that anything has been said of the credibility of BARNABAS MCKEON, but I wish to refer to the opportunity he had of observing, and hence testifying

to the identity of this man. McKeon was the proprietor of the hotel. He was a man who had been accustomed to see many people, and a part of whose business it was to recognize them readily. His mind had been schooled and disciplined by many years of employment in this direction. His mind was more fully disciplined than an ordinary mind would have been in discriminating between persons. You all know that one of the first lessons which a hotel keeper has to learn is to distinguish faces at once from the first time he sees them, so as always to recognize his guests. Although he may not remember their names if he comes to know them, yet he must be able to know their appearance and distinguish them one from another upon all occasions. This is required in order that he may know which room a guest occupies, what entertainment he has, and whether his bills are paid. His mind is developed in this way. The extent to which any faculty, and especially this one, may be developed, is perfectly marvelous. The broker at a glance detects the counterfeit bill, and so with the bank clerk. The railroad conductor learns to know the faces of his passengers. He passes once through the railroad train, and will not perhaps have occasion once in a hundred times to ask a passenger the second time for fare or a ticket. He remembers the faces. So here in this testimony Barnabas McKeon, whose testimony is undisputed, substantially, is, above all others, a man to be relied upon.

Now, in regard to the testimony of Robert Jones. There has been an assault made upon him. I have only the same answer to make to it that applies to the entire argument of the learned counsel. He seemed to suppose that he could stand before you and draw upon his fancy, as if that were evidence or argument. He said he knew that I would charge him with this, and he had good reason to say so, for he knew that the charge was just. I know you will concur with me when I say that there is no evidence here to justify the insinuations and fancy of the counsel in regard to this witness. It is only important that I should remark in reference to his testimony, that Robert Jones

had unusual opportunities of identifying this man. He saw him on five different occasions that day, in different places and under different circumstances. He saw him first at the barn, in the morning, when he applied for the cattle yard; then he saw him when there was this conversation about not caring any more for a dead body than an old log; and then again he saw him in the bar-room, at about two o'clock, and asked him about his cattle that were expected in from Saratoga county; and then about five o'clock he saw him, when he complained that yard No. 14 was too large, and said he would like a yard farther up; and then he saw him again, at about eight o'clock in the evening, standing on the stoop of the hotel with THOMPSON. This is important, because it shows what opportunities this man had to have the identity of this person fixed in his mind.

Of THOMAS WELCH I may say what I have said of ROBERT JONES, so far as his character as a witness and a man is concerned. And yet the counsel has seen fit to term him a dirty, perjured villain. But there was nothing whatever to justify it. This man stood upon the stand just as fair in character, and just as unblemished in reputation as any man in this court, and is entitled to your respect and entire confidence. Then there is AUGUSTUS C. JACKSON, who speaks of the identity of this man. The testimony of JACKSON has been criticised, because it is said, that although he saw this man, although he saw him sitting upon a sofa and observed him closely, yet his testimony is untruthful and unreliable because he speaks of a scar which it is claimed was not there at that time. But it will be remembered that JACKSON saw this man upon different occasions. On the last occasion, it is conceded, there was a cut upon the face of GORDON. It would not be a very great mistake, it would not be a greater mistake than you and I often made, if he (JACKSON) was confused in his mind as to the time *when* he saw that scar. The learned counsel put it that JACKSON recognized the man by that scar; but JACKSON swears that he *thought* there was a scar there; he

does not swear that he identifies him by that scar. It is easy to see how a man might have been mistaken in regard to that, and might have confused the circumstances of the different times that he saw him, and so have misstated the time when he saw the scar. But let us see how the argument against JACKSON will bear criticism. If JACKSON had purposed, and had formed a conspiracy to swear against this man, is it not probable that those who were concerned in this conspiracy would have been in perfect harmony upon this subject? And is not the fact that JACKSON speaks of this scar a circumstance that shows his fairness and sincerity. For if this testimony had been formed and shaped by pre-arrangement of the witnesses, this circumstance should have been modified. I will show you in the course of my argument that these slight discrepancies in regard to minor matters tend to show the truthfulness and reliability of the testimony. Again there is BRIDGET FLANNIGAN, the maid of the dining room. She knew THOMPSON and had known him long and well. She observed this man in company with THOMPSON. Was there anything strange about that? Was it at all remarkable that BRIDGET the maid should observe this strange young man? It is according to all our experience I suppose, that young women are quite inclined to look at young men, and I know that young men are quite given to looking at young women. Is it strange that BRIDGET should look at this man, and after a month or two on seeing him again should be able to say, "I believe that is the man, I have no doubt that is the man I saw there?" BRIDGET'S testimony has been criticised, but you can hardly tell why or how. For the counsel seemed to consider it unimportant to examine the testimony of witnesses fully. He seemed to think that out here in Schoharie where he was a stranger, the people would be so opposed to punishing a man, that the jury would be induced to receive his sweeping statements as authority and decisive in this case. Was there a single thing that could be said against BRIDGET FLANNIGAN? Was there any passion or motive that would

have prompted her to fix this charge upon this man? On the other hand, would it not have been natural for her to sympathize with the prisoner? It is natural for all of the ladies to be enlisted in favor of one whose life is at stake. I have never known a man on trial for murder but what the ladies sympathized with him. It is to their credit that they always sympathize with any man in affliction. It shows their generous disposition. Would it not have been natural that BRIDGET should be influenced as other ladies are, and that she would have inclined in giving her testimony in favor of this prisoner if she could? Was not all the influence in that direction with her? Would not everything in the case, so far as she could be influenced, tend to induce her to exculpate this man from the terrible charge brought against him?

I will next speak of JAMES D. GENTER'S testimony. I will examine in reference to his credibility in another part of the case. I wish to speak now of the opportunity he had to know this man. He saw GORDON as on that beautiful autumn morning they sat down and conversed together and with THOMPSON, in the cattle yard. He had full opportunity to see him as they sat there, and GORDON pretended to be watching for his uncle MCKNIGHT, who was coming, he said, with cattle from Saratoga county. That was what his mouth said, but his heart said, watching for the darkness of night to come, that he might find a victim, and take him out and slay him as he would a beast. No, not as he would a beast, for a beast would not have been slain with such wanton and fiendish cruelty. GENTER had full opportunity to observe this in the yard, and for three or four hours afterwards, while they were conversing on the stoop of the hotel; GORDON leaning his chair against a post, and facing GENTER and THOMPSON, who leaned their chairs against the wall of the house. He, GENTER, saw him also on several occasions, and says he sought the opportunity to see the man's face, because he was a stranger. ADAM SEIVER saw him. Twice this man made application to him; once for a yard, in the morning,

and once for tea, as you will remember. He heard him speak also when this bet was going on in the bar-room. They met face to face and eye to eye; and if he had an ordinary mind and eye he would recognize him again. McMahan saw him also on that day. I do not remember that he talked with him. These ten witnesses, with such opportunities, tell you that they identify this man. This is not a case like that of the pretended seeing of Dr. Parkman, after he was murdered by Webster, where one saw him, as was testified, through a window, and another saw him pass along the street, as alluded to by the learned counsel. This is not the class of evidence we have presented. Here are witnesses who conversed with this man, who had every opportunity to know him. If it is possible to identify a man by the personal recognition of those who have seen him, that identity is proved here. There is no possibility of a mistake. To use the language of the counsel, it is proved "beyond the possibility of a doubt."

But, says my learned friend, [Mr. Hadley] the books are full of cases of mistaken identity. No other man knows so well the cases of this character as does my learned friend. No other man upon this continent has made himself so famous as he, for defenses of this kind. He knows very well that there is no case of mistaken identity in the books, parallel to this. If there had been such a case he would have found it. There is no case where ten fair and just persons, having talked with another person, having had full opportunity to look him in the face, have been mistaken as to his identity afterward. There is no such case in the books.

Mr. Hadley. Will you pardon me? The case of Hall [or Hayes], where a witness slept with the man; testified to by twenty witnesses.

The District Attorney. I never heard of the case — twenty witnesses — slept with him?

Mr. Hadley. Yes.

District Attorney. I assert to you, gentlemen, that Mr. Hadley would never allow a case to go to the jury without such a case being cited, if it was to be found

in the books and was similar. You may judge of the accuracy of my statement by his legal knowledge and reputation.

There has been an attempt made here to bring to bear another species of evidence by which to impair the credibility of several witnesses. The attempt has been made to show that some of the witnesses testified in a different manner, upon this trial, from what they did upon a former occasion. Let us see how that is.

Eighteen months ago the testimony was taken before JOHN O. COLE of Albany. The defendant then had the benefit of a searching cross-examination of witnesses by the learned counsel upon the other side. When the case was brought on at the Oyer and Terminer, the learned counsel had the benefit of hearing the witnesses examined. Now he seeks to impair the credibility of the witnesses by showing that their testimony here is more full than it was in the Police Court or on the former trial. JOHN O. COLE has been here, although he has not been called upon to testify. They brought RUFUS PECKHAM, Jr., one of the counsel who defended GORDON on the former trial, to show that there were some things sworn to here that did not appear upon his minutes as having been sworn to there. I have proved that fourteen witnesses were called upon the first evening there. I have proved the number examined on different days for the purpose of showing the rapidity of the proceedings, and the general manner in which the trial was conducted. I am very sure that you have all seen and had experience enough in the trial of causes to know, that if in the expeditious trial of a case the counsel asks the witness to state simply the general features of a matter of any kind, and then the counsel does not get down upon his minutes all that the witness knows of it. Why it would be treating a witness very unfairly to attempt to impeach him on that ground. And while I am upon this subject, it is due to the court who tried this case to say, that although the charge is murder, though the crime is a great one, though the consequences are of the most momentous char-

acter, it does not follow where these circumstances concur, that the trial must be long or minute in searching out details of the crime. Every defendant, whether he has friends or not, is entitled to a fair and impartial trial. It does not follow, however, that an elaborate and protracted examination of every witness must be gone through with, or that everything the witness knows must be drawn out. If while you are listening to this argument, a member of this bar should fire a pistol into the bosom of another, all the people in this court room would rise up with horror. If afterward that man should be tried as a murderer, nobody would think it necessary that the time of the court should be taken up with proving all that this vast audience might know of the occurrence. A few witnesses would be sufficient to prove all that it would be important to show. So it was in this case. On that trial Mr. HADLEY, for reasons which I have no right to presume to state, who had attended the examination in the Police Court, and made himself familiar with the case (and I do not ask you to suspect any cause prejudicial to this defendant) thought best not to participate in that trial. GORDON'S father, who is now here, concedes that he did not attempt to find counsel for the case. The court assigned his own son as counsel for the defendant, and from that I think you will concede that there was difficulty in finding members of the Albany bar who would attend to it. He assigned also Mr. BULLARD, a very able man. The court has a right in its discretion to assign counsel, and make it their duty to defend the party accused without compensation. Under these circumstances, with this evidence alone, I think you can see why it was not thought worth while on that trial to enter into a minute examination of the circumstances of this case. I think you can see why it would not be deemed worth while to examine fully into the detail of all the circumstances. It is for the same reason that I have illustrated in the case of the supposed firing of a pistol in this bar. The concurrent testimony of ten witnesses together with the circumstances would have made the evi-

dence overwhelming without inquiring into all of the minute particulars, and such inquiry would have been an idle waste of time. I do not think that Judge PECKHAM has given occasion for the criticism of the counsel or afforded reason why the counsel should say that there was no trial there, but merely a conviction.

There has been some variation, as you have seen, in the statements which witnesses have made, in regard to the dress of this man. Upon the subject of dress as relating to identity, I will read you an authority:

"*Dress.* This is usually one of the first circumstances observed in the appearance of a person, and where it is in any degree peculiar, furnishes important means of identification, but the particular arrangement and details of the dress are not usually so much observed as some single garment if noticable from its size, color or material."

That is what the daily experience of courts of justice teaches upon that point.

I now regard the identity of this man as sufficiently established to convict him of this crime. If it stood alone upon this, if this was the only evidence in the case we have established, what proves this man's guilt? The further argument I make in this case, will only be to corroborate the accuracy of this conclusion, and to assure your minds, that there can be no mistake, so that there may be no danger that you will go home feeling at all doubtful as to whether you have discharged your entire duty. I will proceed to show you now corroborative facts and circumstances either of which would convict this man. When identity is established in the first instance by direct testimony, there may be distinguishing marks of the person which will give great additional weight to the testimony. There may be distinguishing characteristics that would make one man differ entirely from another, or that would remove all possible chance of mistake. The first of these points I will notice in this case is, that GEORGE E. GORDON was well acquainted in Saratoga county and had an uncle there by the name of MCKNIGHT. This man who was at West Albany spoke of

cattle that were to be brought from Saratoga county by his uncle, of the name of McKnight. Was not this an extraordinary coincidence? Was it not almost a marvel? At first it seems trifling, but as you consider it, it grows in magnitude, and it seems, under the circumstances, sufficient to establish the identity and produces absolute conviction in the mind. Again, this man was talking of cattle coming in on the Shaker road that leads in from Saratoga. He knew of this road, and that this was the way of coming in from Saratoga. This is important in more ways than one; for not only the court, the counsel, the police officers and the murdered Thompson have been assailed by my learned friend, but the drovers, and they are termed by him a strange set of men, he thinks there were bad men among them, and without a singe scintilla or particle of proof, he would have you presume that some drover murdered Thompson. The drovers do not know of the Shaker road; they do not come in from Saratoga county. Gordon knew of this road, and he knew of the man named McKnight, and so did the man at West Albany. Now, the counsel thought it was strange if a man who contemplated murder spoke of his uncle; he would rather conceal every point by which he could be identified, the counsel thought. But you will observe that, in the great majority of cases, criminals are detected in this way; they fail to guard some point. There is nothing more simple and easy and direct than the truth. The difficulty is, that when a man attempts to play a false part and make it appear like the truth, it cannot be done, it is impossible. When men undertake this they are detected. They fall back upon the truth at some point from their very inability to make a lie complete and in harmony with the surrounding circumstances. Thus there are points left, clues by which we can trace such men and find out their guilt. The man who is fabricating cannot keep up a consistent story very well. He requires a good deal of invention, and has to exercise much care to deceive to any considerable extent; but the man who is telling the truth has no need

to use such care. He can tell the truth under all circumstances without falling into inconsistency. But the man who is playing a false part will be likely to reach some point for which he is not provided, and so fall back upon the truth to relieve his embarrassment. So GORDON, on that day, somewhat embarrassed, perhaps, by the part he was playing—not much embarrassed though, I think, for you see, by his bearing here in court, that he has nerve enough for anything, for a murderer even—he went to MCKEON and said that he wanted a yard; that he had an uncle by the name of MCKNIGHT, &c. That man then at West Albany knew of MCKNIGHT, and so did GORDON. That man at West Albany knew of the Shaker road, and so did GORDON. That man at West Albany knew of the cattle yards, and so did GORDON. That man at West Albany had been in the army, and did not care more for the bodies of dead men than for old logs. GORDON had been in the army, and did not care for the dead or the living, for kindred, for wife, for father or for child.

BURRILL in speaking of identity says: "Peculiarities of personal appearance. These furnish a variety of important means of identification. Among them may be mentioned—lameness, causing a peculiar gait; a habit of stooping or carrying the head on one side; unusual breadth of shoulders; hair of peculiar color or length; peculiarity of a particular feature; a conspicuous scar on the face; the want of an eye or front tooth; the want of a finger or any other visible defect or mutilation."

The front teeth of the man at West Albany were decayed, so were GORDON'S. The proof of identity is stronger than that. It was the two middle front teeth that were decayed in the case of the man at West Albany, and so it is in the case of GORDON. It was even stronger than that, for one of the front teeth was out in the case of the man at West Albany, and so it was in the case of GORDON. Could anything be demonstrated more manifestly? Is it possible for human testimony to fix identity with greater certainty?

This evidence of identity, about which there is no

possible doubt, for it is proved by a large number of witnesses, by ROBERT JONES, by THOMAS WELCH, by AUGUSTUS C. JACKSON, by JAMES D. GENTER and it is proved by JOHN FAIRCHILD and by PETER J. LIKE, that GORDON'S teeth were then decayed, that a middle front tooth was then out. Is it probable that these coincidences would occur in *different* individuals once in a million times? Does not such a coincidence establish this identity beyond a possible doubt? There is nothing of the uncertainty of "grease spots," as the counsel said of the stains upon the clothing that, it is conceded, GORDON wore at the date of this murder. It does not require any of the chemical skill that has been exercised upon those "grease spots" to appreciate *this* evidence. This is the naked truth before the eyes of all of us. Here, in court, is this very man, bearing the marks of identity just as plainly as if the words "murderer of THOMPSON" were written in blood upon his forehead. However much all of us here may regret that this man is guilty, nothing short of perjury, nothing short of the violation of the most sacred oaths, can permit him to escape the conviction he merits. Another strong circumstance alluded to in the authority I have read to you, as corroborating proof of personal identity, is the stooping of the shoulders — round shoulders. The man at West Albany was round shouldered and so was GORDON. It is proved, and not disputed, that the man at West Albany had "a stoop," and so had GORDON. He has not seemed to stoop here in court, but none can have failed to notice his bolstered position as he sits back in his chair and avoids the appearance of stooping. But before this murder, it is proved that he stooped habitually. If there was any doubt about it, the testimony has proved that GEORGE E. GORDON was a round shouldered man, and so was the man at West Albany.

It would seem as if I might rest the examination of these facts here, but I desire in this new trial to place this case in such a light that every objector shall be silenced. If there is a possibility of GORDON'S innocence I would desire

that to be shown, if there is not even a possibility of it, that also should be shown here.

I have now to speak of the moustache. The man at West Albany had a moustache, thin, lightish at the butts, of a darkish color otherwise. It is proved by eight witnesses that the man wore a moustache, and it is proved that GORDON wore a similar moustache at that time. An attempt is made, however, to dispute that GORDON had a moustache on the 22d of August preceding the murder. JOHN GORDON, the father of this man, swears to that — that he had no moustache at that date. While I criticise his testimony, I do so in the kindest spirit. I do not blame JOHN GORDON. It is a credit to human nature to know that the father of this defendant can stand here and be able to overlook his guilt. Fathers do forgive their sons, mothers forgive the wrongs of their children. It is to the credit of human nature that they can do so. While I would speak kindly of JOHN GORDON, in referring to his testimony, need I tell you that JOHN GORDON has gone to the verge, if not a little beyond, in testifying upon his oath here as to the truth of this transaction, so far as he is connected with it. It is not in a spirit of fault-finding that I make these remarks. It is to the credit of the man that he forgives the gravest fault his son could have committed, that he tries to save his son from the fate hanging over him. He relates a circumstance as having occurred, when he recommended, as he says, to his son, to remove his moustache, and on the 22d of August, he says, when he saw his son again, the moustache had been removed. It is a little remarkable and strange that a father who only saw his son three times from the first of July to the time of this murder, and did not know where he was or what he was doing, or how he got his bread, or what shelter protected him from the weather, or where he slept, that a father thus inclined should have felt so much interest in reference to his son's appearance, that on seeing him wear a moustache he should advise him to remove it. And then there is the testimony of ALONZO CLARK, upon this point — ALONZO CLARK the

soldier, the *alibi* witness, the deserter, of whom I will speak more fully by and by. Why did not they bring some other witnesses rather than these two, to prove that GORDON had no moustache at about the time of the murder? Why leave a point that could have been so fully proved, so uncertain, depending upon the testimony of two such doubtful witnesses? And even if we suppose these witnesses to have told the truth, so far as to make it out that GORDON had no moustache on the 22d of August, it amounts to but very little. From the 22d of August to the 16th of September, twenty-four days, would be long enough, in warm weather, for a vigorous young man to raise a considerable moustache. So the testimony of JOHN GORDON fails to relieve the matter, and the defendant has only the manufactured testimony of ALONZO CLARK to look to upon this point.

I will here read from a case:

I read that to show you that this evidence about size is not important. The discrepancy in that respect is only to be considered as of any weight where it is very considerable. In this case there is no such discrepancy that can enter into it as an element to at all influence your conclusion.

I come now upon the question of identity to the clothing. Upon this point in establishing identity, BURRILL says: In one respect, this circumstance of dress is less reliable than any other observed appearances, it being frequently assumed for the very purpose of disguise, and laid aside or destroyed after the crime has been perpetrated.

So you perceive that what garments this man may have had on at that time, or whether these are the same garments or not, is not a question of very great importance in this case. For this is testimony which the defendant could easily manufacture. He could lay off his coat for the purpose of accomplishing this crime, and then could resume it again. But the important matters, the personal traits, the round shoulders, and general appearance of the man, could not be disguised in this way. I am not disposed to spend much time compared with what the counsel has spent on

the other side in considering these matters of dress. You will perceive that testimony, evidence upon these points, could very easily have been prepared for the case, and if what they claim is all true, it amounts to but very little. And now I will show you how unfair is the reasoning of the learned and ingenious counsel, and in regard to circumstances, too, that could easily have been prepared, for there has been the fullest notice and the most ample opportunity for preparation. In the first place let me say that a person's description of garments is the most unsafe kind of evidence in regard to identity. You may see a person, and his garments may strike you as light colored, another may say they are dark colored, and another still may call them lightish colored, as has been done in this case. For instance you observe the mixed suit that Mr. PALMER [juryman] now wears. Some of you would say that his clothes were lightish, and others would call them darkish. If persons were asked what clothes Mr. PALMER wore on the GORDON trial when sitting as juror, some would very likely say, a lightish suit, and others a dark or darkish suit. So if you were asked in regard to Mr. HAGER's [a juryman] suit, if you were asked the color of his coat, very likely you would say it was a light suit, or lightish coat, although really the coat is dark. You would be likely to recollect the general effect of a light colored suit, and so describe the coat in accordance with that impression. His coat you observe is really darker colored than this one that GORDON wore. So with regard to the dress that Mr. FRIEDENBURGH [a juryman] wears, if you were asked the color of his coat hereafter, you would recall the general impression of his dress, and be very likely to say that he wore a lightish coat although it is a dark one. You are likely to take the general effect of the suit altogether without noticing separately the different garments. This was doubtless the case with ROBERT JONES, with BRIDGET FLANNIGAN, with WILLIAM MARTIN and with MCKEON. They describe him as having a hat with eyelet holes in it, a hat with a stiff rim and a soft round crown. And you will notice that those who saw

him last before the fatal Friday give substantially the same account of his dress that is given by those who saw him at West Albany. The counsel brought the contents of a rag-bag here to have them select pieces that were like the coat and hat and pants. Some selected one piece and some another of these mixed colors and pieces, as being the nearest to that worn by the man at West Albany. Now, was this because these witnesses who saw this man intended to be unfair or dishonest in their statement? Not at all. They speak of the color as it impressed them. What proves this man to have been GORDON, what proves that he dressed like GORDON is, that eight or ten witnesses who saw him on that Friday, describe his dress in substantially the same manner that it is described by MILLER and others, who saw him last before the day of the murder. They describe his dress as he was seen at the South Ferry in Albany; as MATHER saw him in the Capitol Park, as FAIRCHILD saw him. All describe his dress in substantially the same way. And upon this question of clothes I will ask a question which may tend to show the position of the defendant in this matter. Why were not these clothes produced at the Police Court, or on the former trial? GORDON knew where his clothes were two months before the trial; he knew where he had left them. If he had been innocent, when he knew that men were to swear against him, that he was the man, would he not have sent and got those clothes and put them on, and stood before his accusers and said, "Here I am, dressed as I then was; am I the man?" If he was innocent why did he not send to Schenectady and get these clothes and put them on and say, "Here I am, conscious of my innocence; I am not the man; I was at Albany with ALONZO CLARK; I was at the Shebang; I am not the man, and who dare be my accuser?" That is the way an innocent man would have acted. But how was it with GORDON? He was silent as the grave. He had the means at his command; he could have produced these clothes on the former trial to show that he was not the man. If he had not been as guilty as a dog, a guilty

dog, he would have done it. That he did not do so when acting under the advice of the ablest counsel, is an admission of guilt upon his part. Suppose I say to you, "Sir, you were wrongfully on my premises last night, trespassing, I saw you there, you had on a hat with a round crown, and a great coat." Suppose then the question comes up as to your identity, and you are called upon to put on that great coat and that round-top hat and let me look at you and see if you are not the man, would it not be evidence of guilt, almost conclusive evidence, if you should refuse to put them on? Before the trial at Albany, while the prisoner had the benefit of able counsel, when there was ample time for consideration and consultation, why were not these clothes obtained, and why was not McKeon and Bridget Flannigan and Thomas Welch and James D. Genter brought to look at him and see whether, when dressed in those clothes, in that suit, he was the man they saw at West Albany? If it was true that he was not, would they not have seen it and said so? There would have been no danger in thus putting an innocent man to the test. No, gentlemen, it is not with the view of developing the truth that the clothes have been brought in here at this late day. That supposition does not agree with the proceedings that have already been had, the steps that have been taken in procuring a new trial. They are brought in here in the hope of raising some false issue of fact or some point of law, by which, if possible, justice may be defeated. Perhaps they were justified in supposing that with my inexperience they could bring in here some side issue and trust to that. I have trusted to you to say whether I shall be defeated in my effort to attain the ends of justice. I hope you will examine this question carefully, and not fail to notice any points which you deem important, but which may not suggest themselves to me. The clothes are produced here, I would like to see them, [they were presented to the district attorney by defendant's counsel and he then continued as follows.] They are produced here as evidence on this trial, and I invite your attention to them.

What is the first thing they try to show about them? They turn to the question of blood. They seem to have a holy horror of blood in this case. Who said anything about blood on our part? I asked FREER if those pants were stained and soiled, and if he could *tell* what the spots were, not to *say* what they were. Blood spots—they have had a chemist here who said he could tell by a microscope that they are not blood spots. And in addition to that, see how they have riddled these clothes, cutting out pieces, as they say, for chemical tests to be applied. These light colored pants, their witnesses say, were bought at DEVLIN'S store four months before this murder. GORDON had been in very dirty places during that four months. He had been where there was a good deal of grease. They tell you those pants have not been washed. Do they suppose that we don't know anything out here in Schoharie? If any of you have ever worn light colored pants, is it worth while for them to tell you that these have not been washed after four months' wear? JOHN GORDON tells you those clothes are in the same condition they were when he got them at Schenectady, where his son left them. Does it require any witnesses upon that point? Examine the pants. [The district attorney passed the pants to the jury, who examined them.]

Now here is the coat. ALONZO CLARK knows that this is the same coat that GORDON wore, by the lappel. It is testified that this has not been washed. I have not been much in the washing business, but I say that has been washed to be put before this jury. Of course they would not put the coat into a tub and wash it. But there are other ways of cleaning garments. They have scouring, cleansing processes in the city, and there are places where it is a business to rejuvenate old garments by such methods. Now it is said that these are the clothes that GORDON left at Schenectady, and that they were obtained there. You will perceive that there has been opportunity enough to change them. But I will not insist upon that. I presume

these are the clothes; I have no doubt that these are the clothes that the man had on at West Albany. I do not think they have played any trick in regard to these. But whose hat is that? [taking the hat produced in his hand.] That is a fabrication and you know it. Do you suppose that my learned friend there [Mr. HADLEY], who has a combination of all the knowledge that could be concentrated in one head, that might tend to save a man from the conviction of crime, who has stood between the accuser and the accused by the law, more successfully than any other man in this country — for he has so much learning and cunning that you cannot punish his clients even if you convict them, as you know— do you suppose that a man with so much learning, and who can do such things as that, would send JOHN GORDON to Schenectady to a tavern somewhere, don't know just where, to get a hat like that, of the tavern-keeper. What tavern-keeper would have laid away such a hat as this is, to be called for? Any honest, decent man would have put this little thing in his pocket and not left it there. It is but a handful when crushed together. What propriety would there be in leaving this at a tavern? Now, is that the hat? Is the story probable that he would go and buy a new hat and then go to a *tavern* to leave his old one. You see *this* hat has not a stiff brim, *this* hat has not eyelet holes. It would not do you perceive to bring in the hat that GORDON wore. There were marks about *that* hat that were a little unusual and would identify it. There were eyelet holes in *that* hat, and it had a stiff brim. So they must have a hat with light colored spots in it, and a pliable brim, not stiff, and with no eyelet holes, and they must take a great piece out of it here, as you see, to ascertain if there was blood on it, as if they had the hat. That is the way *this* hat comes to be here. Now, in regard to blood, there is no probability that OWEN THOMPSON bled much at first. The skull was broken. The blood came out only as the brain oozed through the crushed bone. It does not follow necessarily from the facts of the case that GORDON

must have been marked with the blood. This extreme anxiety to demonstrate that there is no blood upon this hat tends to show that this evidence is manufactured. The entire story about the hat is improbable. Why was not the hat left at the clothier's or at HUNTER'S where the new hat was purchased? Why bring into requisition this other hotel somewhere as the place where the hat was obtained? If I wanted to manufacture evidence of this kind I should know how to do it. I would send a hat to some such place and then send another to get it. This manufactured evidence is in itself very strong proof of the man's guilt. Have they supposed that you were stupid and would not understand this? They have rather tried to persuade you that when this evidence, these facts, are brought to bear against the defendant, they have tried to arouse your suspicion; to have you think there must be something wrong about the argument; something magical or mysterious. The learned counsel tried to prepare you, to guard your minds against this view of the case, which I am now presenting to you. He would have you think that it is not *the truth* that bears so hard upon the defendant. No, not at all. He would have you think that it is that SMITH that does it all; his "bland and seductive smile," he would persuade you, is the power that tells against the prisoner. But, gentlemen, I need not point out to you the folly of such attempts upon his part. You perceive where the truth is in this matter. But they say that at this time GORDON wore no vest. Who says so? GORDON'S father. Who else? ALONZO CLARK. Why did they say so? His father said that he did not wear a vest because it was so warm. I am not disposed to speak with any severity of the father. I can easily see why a man would not wear a vest in July and August, but along about the 16th of September we begin to have pretty cool weather, and a mere shirt is not enough. He bought a vest, you observe, at Schenectady, with the other clothing.

But we have had enough of this. All this evidence

about blood is of a very suspicious character. My learned friend sets up the idea that somebody has presented evidence here about blood, and then goes to work to knock it down. There has been no such evidence in the case. It does not even appear that THOMPSON was injured in such a way that the blood would be likely to spurt upon GORDON. The marks of blood where he was found would seem to have been made while he was struggling and trying to reach some place where he could have the kindly protecting care of some human being. What else is there about this question of identity? This man at West Albany wore a pair of boots. MARTIN and GENTER both swore that they noticed that the heel of his left boot was "run over," so that the upper leather came to the ground, and the upper was worn through. The evidence shows that when GORDON bought new boots, the boots he took off were left at GONSALUS', at Schenectady. It is proved by one of his own relatives that he left the boots there. There was a piece of evidence then that did not depend upon a shade of color or upon chemical analysis. No shoemaker could mend that boot or repair that heel and restore it as it was, any more than you could mend a broken egg shell. Why have they not produced the boots? If the heel of the boot that he wore was not so "run over," why have they not produced the boots? JOHN GORDON tells you he went and got the clothes; he tells you he went and got the hat at some place, a tavern he thinks it was, but did not seem very clear about it; you saw how he dodged upon that point, but as to the boots, where are they? Where is the most important article of apparel of all? It would not do to produce them here. That mark upon them, the heel worn away upon one side, that could not be disguised or repaired. Had the boots been produced they would have furnished unanswerable evidence that they were the identical boots seen at West Albany. If this is not so, why are not the boots here? Here was a piece of evidence, a pair of boots within his reach, that would have proved that he was not the man at West Albany, if he was

not. Yet they are not produced. The reason is evident to you.

Now, gentlemen, against all these evidences of identity; against the testimony of ten witnesses, who speak from their recollection of the man; against the evidence of similarity of garments; against the fact of this man's knowing about Saratoga, and the Shaker road, and McKnight; against the evidence of the teeth, of the round shoulders, of the moustache, and of the non-appearance of the boots, what does this defendant answer? He calls George W. Martin from New York, a drover, who swears that he saw a man at Hunter's who had on lightish colored clothes; he don't even swear that the man was a stranger, and that the man was not Gordon. He calls Eastman, and he swears that he saw a man there, and will not swear whether it was Gordon or not. In reference to the witnesses who do not swear positively to the identity of Gordon, it is only necessary to consider that we can rarely swear *positively* in such a matter. If you have had a horse on your farm, and see him after you have disposed of him, you say it is the same horse; that is, it is like the horse you had, and you have no doubt it is the same horse; but you can rarely be positive, entirely so, upon such a point. They try, on the defense, to make a point of this lack of entire positiveness on the part of witnesses, who still swear to the best of their knowledge and belief, and that they have no doubt. Thus the identity of this man, that it was George E. Gordon, is proved. We have traced him down to eight o'clock in the evening of that fatal Friday. At twenty minutes past eight he left that house. It was quite dark when they left the house, Gordon and Thompson, when they went up that road, then up that alley toward the yard, talking about cattle. They passed by the pile of sticks, oak sticks, used in baling hay, that were there. Gordon took one of these sticks in his hand and carried it with him. They went along up to this gate that opens into the alley. Gordon was walking with this stick, using it as a cane. Thompson steps forward to the

gate, and as he bends forward, stoops over to unlatch it, this man with his full power drew that oak club and struck him just where the skull unites with the back bone, and knocked the top of his head almost literally off, so that the eye was bulged out by the concussion, the force of the blow. The physician says this hard bone here in front was injured, crushed. It was just as THOMPSON was leaning over, that this man struck the blow with the oak club, then he snatches the pocket book that he has been watching all day, tearing THOMPSON'S vest here on the side of the breast as he does so, and then rushes away to effect his escape and avoid detection. Who can say that the law should not have punishment for the death of THOMPSON? Who that has a human heart in his breast can sympathize with the wretch that is guilty of so foul a crime, so cruel a murder? The man that murdered THOMPSON fled away in the darkness of that night. Was it GORDON? At fifteen minutes past eleven o'clock a railroad train left Albany for Schenectady, and at eleven o'clock and forty minutes GORDON arrived in Schenectady. Why did he go there if he was innocent?

If he did not see as he fled to those cars, as he was on board of that train, as he probably has ever since, the bloody swollen face, the eye bulged out, the hideous figure of the murdered man before him, why did he, as the testimony shows, go to Schenectady? And when he gets to Schenectady what does he do? The learned counsel admits that he goes to the hotel and registers his name as GEO. E. GORDON of Little Falls. The counsel asks "why did he not register a false name if he was a criminal?" For the reason that I told you of awhile ago. The truth is simple; nothing is easier than to act in harmony with the truth, and then to act consistently. But when you leave the truth, every step you take is in conflict with it, and no man has the ability to keep up consistently for a long time together a fictitious train of circumstances. It is an impossibility. Men always make mistakes when they are criminals. When they are acting a false part, they will at some moment utter a natural and truthful word or do a natural

and truthful act, and this will betray them, and by this the truth will be developed. Why did he register his name as from Little Falls. He had told ALONZO CLARK, as CLARK falsely pretends, as I will show you by and by that he was going west. A resident of East Albany leaving his home and the family that he should have provided for, leaving the wife that he ought to have loved, leaving his father's home, leaving his friend who had just returned from the army, leaving his associates, as they would have you believe, he starts off in the middle of the night to go to Schenectady, seventeen miles. A bigger lie was never told. A more manifest falsehood was never attempted to be palmed off in a tribunal of justice. It would be a man of uncommonly dull mind that should fail to detect so manifest an untruth. When GORDON gets to Schenectady, he puts up at GIVEN'S hotel, and stays there until morning. And here I will allude to a point which the counsel from Troy (Mr. TOWNSEND) made in his argument. He inquires why, if GORDON was a murderer, did he not disguise himself, why did he not go and get clothing that would have disguised him? Now, I ask if he did not do just that. He did go out that morning and get a new suit of clothes in full, new coat, vest, pants, hat and boots. The counsel said he was himself a stranger to you. Unless he had been so, he would not have attempted to make this point. As soon as GORDON had the money, he went out and got the new clothes. The counsel argued without a single particle of evidence to sustain him, that GORDON got this money by recruiting. The entire story, as supposed by the counsel, is manifestly absurd. Why would an innocent man, under these circumstances, leave Albany in this way, at eleven o'clock at night, and go to Schenectady to purchase a new suit of clothes? Why would he do it? The learned counsel has not told you why. He said that I would bring up some points, very likely, that he had not answered. He knew very well that I would do so, because there was such abundant opportunity, so many points to which no reply could be made.

This man takes the cars at a late hour of the night, within ten rods of one of the largest clothing establishments in the country, to go to Schenectady to buy a suit of clothes. When he purchases the new clothes he leaves the old ones at the store, and has them marked with a false name. You perceive that he had fabrication and falsehood in his mind. Why did he have that false name put upon the clothing? Why did he register his name as from Little Falls? He made his first purchase of clothes at Mr. ELLIS' store. Mr. FREER took the name to mark on the bundle left. The defendant's counsel claim that it was not marked. I offered to prove that they were marked, not for the purpose of showing anything about blood spots as they pretend, but for the purpose of showing that the defendant was acting under a false name. ELLIS swears he believes they were marked, but is not quite sure. JOHN GORDON swears that they were not marked. He says he looked to see whether they were marked or not, but he can give you no reason why he looked. BENSLEY MCKNIGHT, the fellow that went to sleep with GORDON, you remember, says they were not marked, that the paper in which the bundle was wrapped up was not marked. But, gentlemen, why do they not produce that paper here? Here is the hat, coat, pants, neck-tie, but where is the paper? JOHN GORDON swears that he put up the clothes again after unwrapping the bundle, in the same paper in which he found them, and that he tied up the bundle with the same twine. Does the learned counsel lack so much in judgment as not to produce the paper here if it is not marked, to show that it is not? The entire transaction of purchasing this clothing speaks of guilt. Why did this man, within ten or twelve hours after the murder of THOMPSON, purchase this entire new suit? Leaving Albany where he lives, he goes over to Schenectady, dirty, greasy, ragged—he is dressed in a new suit before ten o'clock next morning. He seeks the outskirts of the city. He goes to BRADT, and gets him to go with him to Burnt Hills. He complains that his new boots hurt his feet so that he cannot walk far, to get a team, so that

BRADT may go for it. He is now in the back yard, and the bar-room of the hotel. Gentlemen, why was GORDON there? The murderer of OWEN THOMPSON fled, and so did GORDON. Where did GORDON come from when he arrived at Schenectady that night? ALONZO CLARK says that he saw him off on the cars, and that they had been to the Shebang, among the waiter girls. What did GORDON say? He told BRADT that he had been to Washington and Alexandria, and had come through Albany without stopping. It was not twelve o'clock of the day after he had left CLARK as they claim, that he replied in answer to inquiries about Albany, "I don't know; I have been to Washington and Alexandria, and come through Albany without stopping." Who lies in this case, GORDON or CLARK? Both of them have a motive for lying, as I will show by and by. GORDON lied to conceal his guilt. This testimony is important; it disproves the testimony of CLARK. It shows that within twelve hours after this man murdered THOMPSON, he was giving a false account of himself. He says he has just come from Washington and Alexandria, when, in fact, he came from there in July. Then he produces a perjured villian here to prove that he was at the Shebang. Thus he entangles himself in the net of his own deceptions. I do not believe that in all the history of assassinations that have occurred since the world was spoken into existence by its Creator, there has ever been such a combination of circumstances to prove the identity of the criminal as in this case. All of these circumstances — the round shoulders, the clothing, the teeth, the moustache, the color of the dress, the boot heel run down to one side so that the counter or upper leather was worn, the man who fled and concealed his acts — all of these things are proved by credible witnesses, and all point to GORDON. Not one circumstance is proved that is not in harmony; that is out of harmony with the theory of his guilt.

I will depart now for a little while from the discussion in the order of events, to take up and follow out the evidence upon this question of identity. After that, I will ask you

to return again with me and trace the history of GORDON down to the time of his arrest and trial at Albany. I know that I am wearying you, gentlemen, and wearying myself, but I have a duty to discharge in this case, and I mean to discharge it to the best of my ability and with fidelity. You, too, have a duty that I know you will try to discharge, and I see from the attention you are giving me in this argument, that you will seek information, and observe and listen to gain it, if I may be able to give it you in any degree so far as regards this evidence.

Gentlemen, the circumstance of the arrest of GORDON is extraordinary, and overwhelming in its significance as evidence. There can be no question of the truthfulness of the narration. And the coincidences that there occurred, if there were no other evidence, prove the identity of this man with the murderer with as much certainty as if the person had seen him strike the fatal blow. On the 14th of October (it was another Friday), JAMES D. GENTER had been to New York upon business, and had taken the train from Albany, and was returning to his home at Fort Plain. He tells you that, as he was riding along in that train, not thinking of the murder of THOMPSON, giving no attention to that question, he hears a voice, and he recognizes that voice. This is one of the most certain and unmistakable evidences of identity. The organs of hearing and the power of memory combined, enable many persons to recollect, with a remarkable degree of discrimination, the slightest varying sound, to recollect every voice they may have heard. Upon this point I will read you from BURRILL:

"*Voice.* This circumstance, if at all remarkable, frequently makes a strong and lasting impression on the sense of an observer. In HARRISON'S case it was very prominently relied upon against the prisoner. A witness testified on the trial that, on the same night on which the deceased was found strangled in a hackney coach in the street, she saw a coach stop at a place named, and heard a person in the coach tell the coachman to go to

the home of the deceased, and afterwards saw a person, whom she identified as the prisoner, put his head out of the coach, and heard him swear at the coachman for not going faster; and the latter returned with the deceased who went into the coach. On afterwards hearing the prisoner speak in Newgate, before she saw him, she said she knew him by his voice to be the same person who swore at the coachman on the night in question. The voice of the prisoner was also a corroborative circumstance in the case of *Rex* v. *Burk*."

GENTER heard a man ask the conductor "Does this train arrive in time for the Ballston train?" GORDON asked the question because he wanted to take the Ballston train. That voice attracted the attention of Mr. GENTER. He turned around and looked, and GORDON smiled, and then GORDON puts this question: "Have I not seen you behind a bar somewhere?" This was the same GENTER that was at West Albany on that fatal Friday. He had in some way become associated in the mind of GORDON with being behind a bar. When two objects become associated in the mind, the one always recalls the other. A system for aiding the memory, called mnemonics is based upon this very principle. Now, GORDON had evidently associated this man with the idea of standing behind a bar. So the first time, when he saw him at West Albany, he asks him: "Have I not seen you behind a bar?" Undoubtedly he had forgotten putting that question and the circumstances. The learned counsel said that GORDON would not have asked the question if he had murdered THOMPSON. Why it is not likely that GORDON remembered the conversation that he had at West Albany on the day of the murder. When he saw that same face, the same association of objects suggested the same question as before; or, in other words, the same cause produced the same result; he, therefore, puts the same question. Now I ask you, with the corroborating testimony of MARTIN that the question was asked, I ask you can there longer be *any* doubt as to the identity of GORDON? This man would be convicted upon a fair trial,

upon the testimony of GENTER alone. Here is a thing about which there can be no mistake. A man puts a peculiar question, this question that I have repeated, to GENTER at West Albany, GORDON a month afterward puts the same question to the same man. The coincidence is such that it proves the identity beyond a doubt.

Upon hearing this question in the cars, GENTER replies to GORDON, "I will tell you where you saw me; you are the young man that was at West Albany, that was expecting eighteen head of young steers to come in; two and three year olds." GORDON turns pale, looks out of the window, and there is no further conversation. If GORDON was not the man why did he not say so? If that was not the place where GENTER had seen him, why did he not say so? The fact that he made no denial is an admission; it is an acknowledgment on his part. The conversation ended there. The learned counsel says that GENTER is not a credible witness upon this point, because he did not arrest GORDON then and there. But then there was no chance for GORDON to escape. GENTER did take measures to have him arrested; GORDON was not out of sight. When they arrived at the depot and the train halted, the Ballston train stood there; GENTER says it did, and KETTLES says it did. GORDON gets out, and instead of going to the Ballston train he goes to a livery stable. He then comes out and goes to another; and then when he comes out he is arrested. Now, gentlemen, there is a consideration that I desire you to listen to in connection with this testimony that is unanswerable. GENTER showed upon the stand here that he was a reasonable man, a man of intelligence and a man of fair ability. He sees a man on the cars; he don't know who he is; he is a well-dressed young man, fair looking, new clothes, riding on the cars on the Central railroad. All that he knows about where he is going is that he inquires for the Ballston train, and he knows that he started from Albany. He did not know but he might be the son of the President of the United States, or the Governor of this State, or to

what influential family he might belong. All he knew was, that he heard the voice, that he put that question, and then he recognized the man. On the faith of that recognition, regardless of who the man was, he procures his arrest on the charge of murder. He does not know who the man is, or where he comes from, or where he is going. He does not know that there is a single word of evidence against the man. He had heard his voice, had seen his face, had heard that question, and on the faith of that recognition he arrested him for this crime. Is there any man, however suspicious his character may be, that can hesitate a single moment in believing that GENTER did recognize this man? Is there any one who can believe that he would have incurred the responsibility of such an arrest without the fullest conviction of the identity of the man? It is impossible to conceive of a circumstance, to frame one if you had the ordering of it, more completely unanswerable, unmistakable and convincing, in regard to identity, than this. You are riding in a car, you see a gentleman, well-dressed, you hear his voice and see his face, would you, if there was doubt in your mind, arrest him, without knowing that there was a word of evidence against him or who he was? Yet GENTER did so arrest this man, and it shows that he had no doubt of his identity. If there is any one who can longer have any doubt about this case, then I have indeed mistaken the force of evidence, then indeed I have mistaken the force of circumstances which are overwhelmingly conclusive upon this point. But the learned counsel here, in quite an offensive tone, asked this witness, GENTER, if he expects "blood-money," and in the argument, it was alluded to that there is a reward of more than two thousand dollars upon this man's head. It does not appear that GENTER knew of this reward at the time he caused the arrest to be made. And is it anything to discredit him if he does claim the reward now? Would you hesitate to receive such a reward? Is there anything wrong about it? "Blood-money," the counsel says. He asks who would take the reward for discovering a murderer. Shame

upon the man. Shame upon the Albany officers, upon the policemen MALOY and HALE, for they have been in the informing business, detecting a murderer and bringing him to trial; that is the tone of the remarks of the counsel. Now, are these gentlemen deserving of any criticism upon the part of counsel? Have they not discharged an important duty, and done it nobly and manfully? Does not this entire comment, all these attempts to discredit and stigmatize those who detect a criminal, however guilty he may be, tend to show the guilt of this defendant? But it is said, that when GORDON was first arrested WELCH did not identify him, and HALE said he was not the man. That is easily explained. The proof that they *did* identify him is that they brought him to Albany, that he was there identified by many witnesses, and was put upon his trial and was convicted. Cannot you conceive of a reason why they did not identify him, or pretend to do so, at first? There was an excited crowd there; this murder was the theme of discussion. Had it been known that the murderer had been secured it would have been dangerous, and another murder, that of GORDON, without the forms of law, might have been the result. Hence, it was thought prudent to conceal the identification of this man. I am now through with the testimony bearing directly upon this question of identity.

I will now go hurriedly through with another branch of this case, to establish another point, and that is, that before THOMPSON'S murder, GORDON was a poor loafing creature; not providing himself even sleeping place or food; and that after the perpetration of this crime he had money in abundance and was living in style. I will go through with this hastily, not discussing the evidence in detail. GORDON, after leaving the army, which he had entered as a volunteer, returns to East Albany in 1863, the month of October; and at about the time of his return, marries the daughter and only child of ROBERT WHITE. After his marriage he resides with his father-in-law for seven months, until May, 1864. At that time it appears that WHITE drove

him away from there, as the counsel on the other side insist. About that time, this young, recently married man, seems to have been so entirely regardless of himself, that he was unwilling to provide for his own wants. His father buys him this pair of pantaloons and this coat. This young man, the head of a family, the husband of a young wife, out of employment, out of money; his father furnishing the pantaloons and the coat that he wore down to the time of this murder. In May, then, he left his father-in-law's house. They would have you understand that he was driven away. Suppose he was. Can you not see any reason why a man who had been supported seven months and could not raise money enough to buy his own coat and pantaloons, should leave? He leaves his father-in-law's house, he leaves that young wife there, within two months of the period of her confinement. From that time he entirely neglected her, at the time when she had most need of the husband who had sworn to protect her and provide for her. He neglected her when their first-born was ushered into existence, neglected the wife whom he has sworn to protect as his own flesh and blood. If you feel sympathy for GORDON remember that GEORGE E. GORDON has no heart and no sympathy. He had no sympathy for OWEN THOMPSON, no sympathy for a suffering and patient wife, he had no sympathy nor love for that first-born child, that a man who has any soul in him loves as he does the apple of his eye — the first-born of his loins, that a man will go anywhere that he may take to his bosom to caress and kiss, the first-born child of the wife he has taken to his bosom for life. GORDON had no such heart. GORDON had no such sympathy for this young loving wife nor their helpless child. GORDON was a man who could raise his oak club and strike out the brains of his victim as you would crush the head of an adder. He had the nerve to do it. If you do not believe it look at him. It appears that during the spring of this year, after he had been sent away by his father-in-law, he was for a little time in the employ of the Western railroad

company, and that he soon left that employment of his own volition. Now from the time he returned from the army he had lived with and on his father-in-law, seven months. Then he left his wife and from that time to this he has never provided for her or her child. In a short time he leaves the employment of the Western railroad, and from that moment began his career of idleness and crime. Where does he go? He proceeds to Washington and Alexandria. And while he is at Washington (he seems to have been driven to want there), he goes to Mr. ROWE who was an engineer, a man from East Albany, and tells him that he is "hard up," and wants employment. This was in July. ROWE employs him as deck-hand on the steamer at forty dollars per month, and tells him that he thinks he can get employment for him at City Point at sixty-five dollars per month. GORDON, so far from being willing to earn an honest living there at forty dollars per month, instead of staying there he leaves the boat, and the very next day, the afternoon of the second day, he goes to show a man the way to the Baltimore depot, and instead of coming back he probably goes on to New York. You will remember that soon after, YALE sees him at East Albany, and he tells YALE that he is out of money, and he leaves his trunk in New York as security for a loan. He was out of money in July, as he tells YALE. We have proved by PETER GOLDEN that early in August he said he was out of employment, and that he expected work on the Central railroad as fireman. He slept at GOLDEN'S house; here is one evidence of his sleeping around wherever he could get a place to lodge. During the fore part of this month (August), you will remember, HURD sees him at the Dunlop House. He stated to HURD, you will recollect, that he was in the chicken business with his cousins, and that he expected them in with a load from the country. He stayed at the Dunlop House three or four days, but no team came and no chickens came. HURD called upon him for the payment of his bill. He tells HURD that he has only a fifty dollar bill, nothing

smaller, but that he will pay him next morning. He leaves and does not come back, and never paid him. YALE says he saw him three times in the course of this month of August. GORDON told YALE that he was a fireman on the Central railroad. This was false, as we have shown by the testimony of the two FOSTERS. We have shown that he was not a fireman or brakeman. He told GARDNER about the same time that he was firing on the Central railroad. About a month before the murder, which would be about the middle of August, CHANDLER says that he saw him at the steamboat landing. He said that he was out of a job. This was about the middle of August, and he then had a moustache. He said he was out of a job, while just before that he had told GARDNER and YALE that he was a fireman. Almost every day during the month of August he was seen by TIBBITTS, the substitute broker, who was called here. He saw him generally sitting on the steps of the Union Hotel, apparently out of employment. During that month GORDON called upon TIBBITTS and told him he had a couple of substitutes that he could get him. He said then that he was firing on the Central railroad, and that, I have shown you, was a falsehood. He tells TIBBITTS that he is not in the recruiting business, that he does not want the pay for the substitutes, but that he is a fireman on the Central railroad, that he might give him what he chose for the substitutes. This was perhaps with a view to pave the way for another transaction, for on that very day he sends a note to TIBBITTS, saying that he is hard up and wants to borrow three dollars. The letter is proven to have been in the handwriting of GORDON. TIBBITTS says that GORDON acknowledged or recognized the debt after he was arrested. So you see that this vagabond, as early as the middle of August, was resorting to this kind of artifice to get three dollars. Three weeks before the murder, in the latter part of August, he was seen by THOMAS MATHER, and was then out of business, and seeking employment. About the same time he was seen by GEORGE DRUMMOND sitting by a switch house. He was contracting debts then

for whisky to drink that he did not offer to pay for until after this murder took place. Early in September, RYAN says that he saw him out of employment. RYAN was tending switch on the Hudson river road. It was in his switch shanty that GORDON slept. Within a quarter of a mile of his father-in-law's house, and within the eighth of a mile of a hotel, this GEORGE GORDON that they say was the owner of thousands of dollars, made by recruiting, was sleeping in a dirty, uncomfortable switch shanty; sleeping upon the old cast off car cushions. The recruiting agent, the owner of thousands, as counselor TOWNSEND says, was sleeping like a dog in his kennel, in a sort of crib that the switch tender had arranged. About two weeks before the murder, GORDON took tea with CHARLES CLARK, at CLARK'S mother's. This was not ALONZO CLARK, the *alibi* witness, but his brother. About eight or ten days before the murder, BENEDICT saw him unoccupied, you remember, and FAIRCHILD saw him frequently. On the 9th or 10th of September, MILLER saw him unoccupied, and looking shabby. ROBERT G. WATERBURY swears that he saw him on the 14th, two days before the murder, that he saw him in the Capitol Park, that a week before that he had seen him sitting idle in the same park. ROBERT J. WHITE swears also to his being idle and unemployed. PETER J. LYKE swears that within a week, he thinks, the day before the murder, he came into his restaurant and begged for food. An able-bodied man going into that restaurant and begging for food to satisfy his hunger! LYKE tells him to go and take it. After taking a part he wraps up another portion in a paper and says: "I will take this if you are willing, for I may not get anything more to eat to-day." On the day before this murder or within a week before, he is proved by JOHN MCCARTY and OWEN KEARNS to have been at Gallup's hotel in the village of West Albany. On the former trial it was said the day before, but they now claim that it was the week before. I regard it as unimportant whether it was the same day or not, for whichever it was, it proves that he knew

about West Albany. It proves that he told a falsehood when he said to Judge CLUTE that he had not been to West Albany for three years. It would appear, at all events, that it was near the time of this murder. You will remember, too, the circumstance of his going into MCGINNIS' restaurant. He ate his dinner there, and then began to feel around in his pocket for a bill to pay, money that he said Foster had let him have. Finally the rascal, the impudent villain, got down on the floor and searched around for it, and did not find anything, of course, and went away without paying at all. He was not then employed. He merely took this way of managing as a cover to get his food without paying for it.

So he was, as I have shown you, lazy and unemployed, without money and begging for food, begging for enough to satisfy his hunger. He was, then, up to the time of this murder, an outcast and vagabond.

There has been some attempt on the part of the defense to impair the credibility of some of these witnesses. With regard to the testimony of PETER J. LYKE, it was about the middle of September that GORDON was at his place and had this meal. It was three or four weeks before the *arrest*, and not before the *murder*, that he represented that GORDON was there. And in regard to JOHN MCCARTY, who says he went to Providence the same day that he saw GORDON at GALLUP'S hotel, there is really no difficulty. He went to Providence, but had not started at the hour mentioned as the hour when he saw GORDON. The counsel for the defendant claim, also, that GORDON could not have been at GALLUP'S that morning at nine or ten o'clock, because we prove him to have been at MCKEON'S. But this is not so. It was nine o'clock when JACKSON saw him on the stoop at MCKEON'S. It was half-past ten o'clock when SEIVER was there, and GORDON applied for a yard. There was time enough for him to have been at GALLUP'S hotel in the interim. Thus we trace GORDON down to the time of this murder, and show that he was idle and destitute.

Now let us see what a change comes over GORDON after the date of the murder. You can scarcely imagine a more utter outcast, a more destitute creature than GORDON is proved to have been up to this date. On the morning of the 17th of September, he emerges from the tailor's shop at Schenectady dressed in a new suit of clothes. He goes to BRADT and gets him to take him over to Ballston. While he is with BRADT he shows him his money. He tells him he had made nine hundred dollars at Washington and Alexandria recruiting. BRADT sees a five hundred dollar bill, and says he had "quite a pile of money." GORDON goes with BRADT and they meet MCKNIGHT and MANSER. They spend the day together drinking and riding about, and finally GORDON puts up to stay over night at BENSLEY P. MCKNIGHT'S. To show the condition of his mind, I notice that during the day he seemed anxious about something. He told BENSLEY P. MCKNIGHT that he wanted to go to Ballston Springs; but finally they concluded that it was so cold they would not go that day. During the evening while he was at MCKNIGHT'S, or during that day, he was seen by SHERMAN MCKNIGHT, ALBERT TAYLOR and BEAMAN, and all of these witnesses swear that he had no moustache. And BEAMAN and TAYLOR both swear that they discovered that the upper lip was lighter colored than the balance of his face, showing that the beard had been recently removed from it. During the day he shows his money to JAMES MANSER and MANSER sees a five hundred dollar greenback. He tells his associates that he has been recruiting in the western part of the State. WILLIAM COVERT testifies to this. If he had been recruiting in the western part of the State, every man who had been enlisted or recruited had a name, and that name could be proved, and the fact of his being recruited shown when he was mustered in. It is not a matter that it would be impossible for GORDON to prove if he knew it to be true. But you perceive the contradictory nature of his stories. He tells one man that he has made nine hundred dollars. He tells another that he has made five thousand dollars at

Rochester, in buying up recruits. He shows McKnight money; ten hundred and twenty or ten hundred and forty dollars, and a part of it was a five hundred dollar greenback. He tells him that he made fifty dollars on one man, at Greenbush. That was false; there was not one word of truth in it. If it was true he could show it. He has McKnight lock up the money for him. I do not think Gordon wanted that money under his pillow when he slept that night. You remember the counsel said that McKnight slept with Gordon, probably, because he did not wish to be troubled with a crying child. McKnight was a little astray at first, you recollect, about the age of that child. Now, it is proved to have been seven months old. I need not tell you that it is in accordance with the ordinary course of things that McKnight should sleep with his wife and that a seven month's babe should not disturb him. But after Gordon came, he is shown to have left his wife and to have slept with Gordon for six nights, in the same house. The poor babe; was that the trouble? Did Gordon want him to sleep with him because he wanted to get away from the child? No; that was not the reason. Gordon wanted Bensley McKnight with him to keep away another and an unwelcome bedfellow, of whom he was afraid. He dreaded the ghost of the murdered Thompson. When he would sleep at night there was Thompson staring at him. There was that swollen head, there was that crushed skull; there was the brain oozing out; and there was that eye bulged out of its socket. He wanted McKnight as a bedfellow because Thompson was too near him. Observe the excuse that Gordon makes for asking McKnight to sleep with him. If he stays there he insists that McKnight must sleep with him because they had slept together when they were boys. In all the sleeping together that I ever heard of I never heard of men trying to get together in this way. Is there any one in this vast audience who ever knew a young man to make it a condition of his visiting a relative, that that relative, though recently married, should leave his wife and

sleep with him because they used to sleep together when they were boys? What explanation is there of this desire for McKnight as a bedfellow? The explanation is that he dreaded the presence of the murdered man. He had spent a few dreadful hours in Givens' Hotel at Schenectady, and there was Thompson. He was terrified with his short experience of murder, and he wanted company. He did not like lonely hours when the ghost of Thompson was near him. Gordon went to see the father-in-law of McKnight, William Cavert. On Tuesday the 20th, he was at the general training at Capron's Hotel. There he had the conversation with Horton Rue. He told him that he had been getting recruits in the western part of the State, and that he had made ten hundred and twenty or ten hundred and forty dollars. Tuesday evening he is at Schenectady with McKnight. He proposed to him that they should make a trip to Rochester to visit the State Fair, and said that he would pay McKnight's railroad fare if he would accompany him. He also loaned McKnight seventy dollars, as he swears, to purchase a suit of clothes. Gordon paid the railroad fare, and they went as far west as Utica on Tuesday, and remained in Utica until Wednesday noon, and then took the cars for Rochester. Reaching Rochester on Wednesday night, they remained there, stopping at a first class hotel, and attending the theater, &c., until Friday morning. Then they started for Niagara. They remained at Niagara, spending money freely, until Sunday evening. See, now, how you find this man. On Thursday the 16th of September, he is a penniless vagabond, sleeping in switch shanties about East Albany, and begging his food. On the following Tuesday you find him well dressed, with abundance of money, attending places of amusement, loaning seventy dollars to a friend, and paying his railroad fare for the sake of his company, spending money freely and lavishly. These circumstances, this sudden change must be accounted for. While he was at Niagara Falls (who *can* have sympathy for Gordon), he

goes to a hotel to redeem his mother's gold watch that he had pawned on his wedding tour.

MR. HADLEY. I have listened to the counsel's misstatements for the last four hours, but wish to correct him on this point. There is not a particle of evidence in this case that GORDON had ever pawned his mother's watch.

THE DISTRICT ATTORNEY. The learned counsel says that for four hours he has listened to my misstatements. You know me and you know this testimony, and you know whether you will believe me. I would as soon cut off my hand as make a misstatement of this evidence. I would not unjustly harm a hair of the head of GORDON; but I believe that if GEORGE GORDON is proved guilty by this evidence it is my duty to say so. The learned attorney from Albany charging four hours misstatement on me! This great lawyer, this famous man, this man who has smelled out the grease spots on GORDON'S trousers, and who has brought Dr. YOUNG out here to show that grease is not blood, says I have misrepresented GORDON in charging that he *pawned* his mother's watch. What on earth is it but pawning a watch when it is left to secure a board bill? Does the learned counsel suppose that he is here before men that have no brains or discrimination? A man leaves his watch for board, and that is not pawning it? This he did on his wedding tour, and it would seem that he had never been able to procure money to redeem his mother's gold watch down to the time of the murder of THOMPSON. Are there any further misstatements that you [HADLEY] wish to correct?

On the 3d of October, we find GORDON at Ballston, attending at the training. He gets into conversation with JOHN MILLER, with whom he is well acquainted, and shows him his money. MILLER recollects that he saw two one hundred dollar bills on the Park bank. On the 4th of October, the second day of the training, he purchases a pair of horses of ARNOLD for three hundred dollars. This was the first time he had been able to indulge in the luxury of a horse, or even what the learned counsel spoke

of in an allusion of his, a donkey. He gets a harness—borrows one of ARNOLD. Of the three hundred dollars which he pays, two hundred are one hundred dollar bills on the Park Bank of New York, the same money that PERKINS paid to THOMPSON in New York. SICKLER, the partner of ARNOLD, says that after the money was handed to him they divided it, one taking one of the hundred dollar bills, and the other, the other. On the 7th or 8th of October, YALE sees GORDON at Greenbush. GORDON rides about in style among his acquaintances. DONELLY goes with him, and YALE also. They put out the horses at a livery stable. Then they go down to Palace Hall in Albany—TOM MULHALL'S—among the maids, and then come back to Broadway. And now see where they put up. No switch shanty will do now, no Union hotel or Merchant's hotel. No, they go to the Delavan, the first hotel of the city. NOW GORDON is in the hotel, not the switch shanty, paying the bills of his associates as well as his own. Here we have the contrast—sleeping in the switch shanty and then in the best hotel in the country, and more than that, taking his comrade with him.

About this time, and a little later, we find him paying up his bills and debts that he had contracted about Albany and Greenbush. He is in at PETER J. LYKE'S and pays his bill there, and to DIAMOND'S, and pays a bill there. The day before he was arrested he told BOLTON that he had made some fifteen hundred dollars recruiting, north and west. It was the evening before his arrest that he was in at DIAMOND'S store, and told him he had come to pay that bill.

Now, I have gone through with the testimony as I understand it. There has been some talk against the witnesses and the court that tried the case at Albany, and the officers. I had hoped that I should escape; but, no, the learned counsel from Albany proposes here to assail me, to impeach my statements. After we have tried to punish a criminal at Albany, and brought him here because he could not be tried there, then the learned lawyer from Albany says I

have stood here for four hours making misstatements, that seem to have grieved him.

But what does the history we have traced, the evidence in this case, show? It shows this man destitute, not only of the comforts but of the necessaries of life, except as they were supplied by his father. It shows that he had abandoned his wife, his business, that he was dirty and ragged, that he was without food. Suddenly, at the date of this murder, we find him well-dressed, with plenty of money, which he spends lavishly upon his pleasures and his friends. What does he say of his condition? He says that he is fireman on the Central railroad. That is a lie! He says he is expecting business soon. That is a lie! He says he is looking for and expects a job. That is a lie! That he has a job. That is a lie! He accounts for the possession of so much money as he had after the murder by saying that he had been recruiting, and tells the various sums he has gained, varying from nine hundred to five thousand dollars. These are the statements that this man makes, and here is the evidence against him. This is the position in which he is placed. Is there any longer a ray of doubt as to the guilt of this man? In regard to such a change of circumstances as we find in this case, from poverty to comparative abundance, and the explanation of it we are justified in demanding, I will read from WILLS.

"A sudden and otherwise inexplicable transition from a state of indigence, and a consequent change of habits, is sometimes a circumstance extremely unfavorable to the supposition of innocence."

The possession of this money by GORDON is in no way explained. When asked where he obtained this money, he gives no answer. What do his counsel say? They reply that his mouth is closed by the position he is placed in as defendant. Suppose it is closed, is that any reason why he should be acquitted? "But," says the counsel, "the circumstances are such that he cannot tell where he got the money." If he was in the employ of the Central railroad he could tell that. If he had recruited men at Rochester,

or Greenbush, or Albany, he could surely give the names of some of the recruits, or tell the name of the man who paid him for them, or in some way make it possible to trace out the transaction. Suppose *his* mouth is closed, where is the man who paid him this money?

And now I may ask the question, whose money this was? Up to this point, you observe, my argument has not been founded upon the *identity* of this money. I have spoken simply on the change in GORDON'S circumstances from beggary to competency. Now, I ask whose money this was, and what the conclusion is which may be drawn from the fact of its being shown to be the identical money which was in the possession of THOMPSON? Upon this point I will read you an authority:

"The actual identification of paper money is, however, often dispensed with to a considerable extent when there are other circumstances from which the general inference of guilt may be drawn. Thus, in Massachusetts, when the prisoner had been indicted for stealing a package of bank bills in December, it was held, that evidence that two of the bills (which were identified), each of the denomination of one hundred dollars, were in the defendant's possession, one of them in March and the other in April following, might be submitted to the jury, and that they might infer therefrom and from accompanying circumstances, that he stole the whole package.

It was held, also, in the same case, that although *none* of the stolen bills were identified, yet that evidence was admissible to prove that the defendant, after the larceny, was in possession of two one hundred dollar bills like those that were proved to have been stolen, and also a large amount of other bank bills; and that such evidence, together with evidence that the defendant was destitute of money before the larceny, might be submitted to the jury to be considered by them in connection with other accompanying circumstances indicative of his guilt."

Now, under the light of this rule, whose money was that? MCCLAREN and PERKINS tell you the money

was paid to THOMPSON. I show you this same money on the Park Bank in possession of GORDON and paid to men in Ballston. I also show you that GORDON was in possession of a five hundred dollar greenback — the same that was paid to THOMPSON. Now it is for GORDON to prove where he got this money. The mere fact of possession is presumptive evidence against him which he is bound to remove by evidence. He does not remove it. Whose money is this, therefore, and how did GORDON come in possession of it? The fact that a man is found in possession of goods taken from your house is presumptive evidence against him of burglary, and is sufficient, if he does not show how he came into possession, to convict him. Or if he is found in possession of that which is from your person, as money, it convicts him of robbery. The burden of proof is thrown upon *him* to show that he is not guilty of the crime.

I am now showing you one of the ways this man is convicted of this crime, by being in the possession of goods or money wrongfully taken. I will read additional authorities, "The fact of the possession of stolen property is often a material circumstance in the proof of other crimes. In the case of *Rex* v. *Diggles* it had great weight in convicting the accused of the murder of two persons."

I come now to the question, "Where was GORDON on the night of the murder?" If he was not at West Albany where was he? Of his liability to show where he was I will read from WILLS on circumstantial evidence, "If a party charged with crime be put upon his defense *recently* after the crime under strong circumstances of adverse presumption and cannot show where he was at the time of its commission, it affords strong presumption of his guilt."

So, you see, that all the authority to be derived from experience, and which has been treasured up in the form of laws, holds that a man who is shown to have been at the place where the crime was committed, is called upon, if accused, to show his whereabouts at the time. He

must give some reasonable account; tell some reasonable story. So, gentlemen, the question arises, where was GORDON on the night of the 16th of September, 1864? He was asked when he was arrested where he was; he was asked on the way down to West Albany, in the cars, after his arrest, where he was; he was asked when placed upon preliminary examination in the Police Court where he was; he was asked at the last trial at Albany where he was; he was asked in February last, when his trial was attempted in Albany and failed for want of a proper jury, as was alleged; he has been asked by this trial where he was, but there has been no answer. ALONZO CLARK has been produced here before you, brought from the city of New York to show where he was. And now, with regard to the testimony of ALONZO CLARK I say, that if he was the best man in the city of New York, his testimony in this case is not to be credited. *First*, because the evidence of an *alibi* is always suspicious; *second*, because this pretense is set up so long after the charge was made; and *third*, because the evidence of ALONZO CLARK is overwhelmingly controverted by other witnesses. I will read you upon this matter of *alibi* from the case of the *Commonwealth* v. *Webster*:

"In the ordinary case of an *alibi*, when a party charged with a crime attempts to prove that he was in another place at the time, all the evidence tending to prove that he committed the offense, tends in the same degree to prove that he was at the place when it was committed. If, therefore, the proof of the *alibi* does not outweigh the proof that he was at the place when the offense was committed, it is not sufficient," and Mr. WILLS says: "The credibility of an *alibi* is greatly strengthened if it be set up at the moment when the accusation is first made, and consistently maintained throughout the subsequent proceedings. On the other hand it is a material circumstance to lessen the weight of a defense of this kind, if it be not resorted to until some time after the charge has been made; or, if having been once resorted to, a different and inconsistent defense is afterwards set up. This defense is often enter-

tained with much distrust, because it is easily concocted and frequently resorted to falsely."

The credibility of an *alibi* is greatly strengthened if it be set up at the moment when the accusation is first made, and is constantly maintained thereafter. From what I have read, you perceive the nature of *alibi* evidence, and what credence should be given to the pretense in this case. This *alibi*, as sworn to by ALONZO CLARK, is met in every conceivable way in which testimony could be met and controverted. In the first place the testimony of ALONZO CLARK is disputed by GORDON himself. It does not appear that from the time of the murder, GORDON ever made any pretense that he was with ALONZO CLARK, down to the time that CLARK came home. The first thing GORDON would have thought of, if he had been innocent, would have been to have referred the parties to where he was. It would have been the first thing that GORDON would have said, "I know where I was, I was with that man." That is the first thing an innocent man would say under such circumstances. Although GORDON has been twice on trial for murder, and gone through with a preliminary examination, there is no pretense that GORDON knew anything about this until a few weeks ago. CLARK undertook to say that *he* did not know of the murder, or the time when it was committed. But where was GORDON? If he was with CLARK, as CLARK says he was, when the murder was committed, why did he not call CLARK as the man who would have said so or could have said so if it was true, I say then that CLARK is contradicted by GORDON himself, for he said that he took tea with a man in Albany that night and could prove it. He did not say that he took tea at CLARK'S that night, but that he went with a man who worked for MCGINNIS. And then, in regard to the time, CHARLES CLARK swears positively that ALONZO had left and gone back to the army before the murder. And GEORGE CLARK says that according to his best recollection, ALONZO had gone back before the murder. So this man stands here contradicted by GORDON, by his two brothers, and by ten witnesses, who

say that they saw GORDON at West Albany. I think that should dispose of ALONZO CLARK or any other man. The learned counsel who examined him said he is a good man, and that he could see it beaming in his face. I don't see any such thing beaming in his face. They said I frightened him on the cross-examination, and the counsel told a fable about the lion and the donkey. Now the lion — he compared that pusillanimous man to a lion — it would have made any lion feel bad if he could have heard it and appreciated it. I do not see that he is a good man. He left the army, that is he deserted it. He was married in July last, and then leaving his wife, he is hanging around Albany, and then around Washington. He hangs around some two months until he is taken possession of and put into the army and compelled to work out his lost time. The counsel seems to think him a good man, a better looking man than JONES or WELCH or JACKSON, or any of those who saw this man (GORDON) at West Albany. He was the man that spent his time in loafing about with GORDON in the groceries, and with the lewd girls at the Shebang. A good man! Why, he was suspected of this murder by his own brother. The brother wrote to him, according to his own story, not to inquire "what about GORDON," as the counsel said, but to ascertain what *he* himself had to do about the murder. The learned counsel says that he, ALONZO, has something to remember the date by, has an anchor. GEORGE and CHARLES, he says, have no way to fix the dates positively; but this blessed ALONZO, fresh from Alexandria and desertion, fresh from the Shebang, living about Washington as a deserter, he has an anchor. What is it? Why it is his birthday. His birthday was on the 15th day of September. He remembers that he was in Albany, and remembers that he was with GORDON, and what they were doing on the day following the 15th, and that would be the 16th, the fatal Friday. Now, if he can remember so minutely about the 16th, the day following his birthday, is it not reasonable to suppose that he would remember some one circumstance, something about the 14th, the day preceding his birthday?

But he cannot so much as tell where he was on the 14th. He cannot name a person he saw on that day. And, again, he cannot name a person that he saw on the 16th, outside of their own household, besides GORDON. He cannot tell any place where he stopped on his way to Albany, or on his way from Albany, South. Why? Because he knew perfectly well that the moment he gave any name, the moment he gave the name of any hotel where he had called, that moment, by means of the man, or of the hotel register, we should have the means of convicting him of perjury. You remember how it was when I tried to have him tell of any one he had seen on his birthday or on the day following. You remember how he spoke of the members of their own family, but would go no further, but paddled off in a way that failed to give us any further information. Why could he not remember to have seen other persons as well as GORDON? The learned counsel would, perhaps, tell you, that he was a friend to GORDON, and that was the reason. But how much of a friend was he to GORDON? He tells you that he never heard of the murder for the two days he was in the public streets of the city of Albany after it was committed; and they took a newspaper he tells you. Do you believe that? There was not a man, woman or child old enough to understand this thing, in the vicinity, that did not hear about this murder before twelve o'clock of Saturday night. Every newspaper had an account of it, and it was the theme of conversation in every bar-room and dining-room. You know how a terrible crime like this is discussed. MULLER, only a few months ago murdered a man in England, and the whole world was agitated by news of the crime, and MULLER was detected and arrested as he was landing at New York, and taken back for trial and executed. His was a crime that does not bear comparison with this in its terrible character. Now, if intelligence of this crime of MULLER'S was borne to every part of the civilized world so soon, shall it be said, can it be believed, that a man should be in a place so near by as CLARK was, or says he was, for two whole days immediately after the

murder and never heard of it? But it may be said that, although it was announced, and he may have heard of it at the time, yet it made no impression upon his mind, and that he subsequently made no inquiry about it. He did afterward know that GORDON was accused of it. Did he make no inquiry about it? Did it not make impression enough so that he cared to inquire for the fate of GORDON? According to his story he did not care as much for GORDON as I would for my dog Sport. If you had a decent dog and he was charged with killing sheep you would inquire what became of the dog, and whether he had been found guilty of the charge. But this good man, that the counsel would not exchange for all the JONSES and JACKSONS in the case, this good man, he never knew the fate of GORDON nor inquired about it when he was charged and tried for this terrible crime. He never made any inquiry about the result, nor cared. He said he did not care, and at that point Counselor TOWNSEND interrupted me. It began to wax pretty warm with ALONZO, if it appeared that he did not care. The power that is above can see and know what influence brought ALONZO CLARK here, and why ALONZO CLARK has so guarded his testimony that we cannot show him guilty of perjury. He was careful not to say that he registered his name anywhere or saw any man.

He pretends before you, under these circumstances, that on the night of the murder he went to the Shebang with GORDON. He is the only man who swears that at that time GORDON had no moustache. All of the other men who saw him, all of the others who ate with him or slept with him, all swear that he had a moustache except ALONZO CLARK. NOW CLARK pretends that, on that night, he went with GORDON, who had on these ragged clothes down to the depot, for GORDON to take the cars, at fifteen minutes past eleven o'clock, as GORDON said that he was going west. Leaving in this condition at this time of night and going to a neighboring city and buying a new suit of clothes in the morning—it is an improbable story, and

there is no truth in it. If GORDON had wanted to go to Ballston, he could have taken a train the next day at eight o'clock, or at half-past nine o'clock, or at one o'clock and ten minutes. Instead of that he starts off at fifteen minutes past eleven o'clock at night, and puts up at GIVEN'S hotel in Schenectady. The entire story bears the marks of falsehood. If these two men were together that day, surely somebody would know it beside ALONZO CLARK. Even his own brothers contradict him, and he gives no clue by which any one else can be called, whom he saw, except those of his family; he is careful to afford no means by which his story can be tested. Neither does GORDON give any account, by any witness, of where he and CLARK were upon that day. It would certainly have been possible to do this were there any truth in the story. But GORDON has disputed it in the statements he has made. Now GORDON was somewhere on the 16th of September, and the burden of proof is upon him to show where he was. The only attempt that he makes, the only explanation that he offers, is by bringing this stranger here, at this late day, with this fabricated story, If GORDON had been in Albany that day, or Greenbush, it would not have been left wholly to ALONZO CLARK to prove this *alibi*. The story brought here now carries with it its own refutation. I will not longer detain you with it. It cannot be possible that, in the mind of any man, the story of ALONZO CLARK, whether it be a mistake as to time, or a pure fabrication, can weigh against the testimony of his own brothers, of GORDON'S statements and of ten witnesses who have sworn to the identity of this man. Especially is this true, when the conceded idleness and vicious habits of ALONZO CLARK are taken into account.

Again, they have made no pretense of showing where the defendant got this money. The learned counsel, who addressed you on the part of the defendant, admitted that this was a suspicious circumstance. In regard to this point, I propose to read from the decision of the Court of Appeals in this case, granting a new trial. And in connection with

this I would say, that it is due to the defendant, of course, that he should be tried by what appears upon *this* trial alone. I mention this because there has been some criticism by his counsel upon this point. And then, as to what was said about a new trial being granted upon merely technical grounds, you will perceive how that is, as I read from the decision of the Court of Appeals, as follows:

"When the jury were thereupon told [referring to the absence of explanation as to prisoner's whereabouts] from the bench that the absence of proof referred to, if it was in the power of the prisoner to produce it, rendered the evidence given by the prosecution upon the principle question certain and conclusive, there was nothing upon that point left for them to determine."

The Court of Appeals say that part of the charge of the judge was in fact disposing of the case without submitting it to the jury. The Court of Appeals further say:

"The absence of such evidence [referring to evidence showing where the prisoner was at the time of the homicide], especially when it appears to be in the power of the prisoner to furnish it, creates a strong presumption of his guilt, a strong inference against him, and is a circumstance greatly corroborative of the truth of the evidence given upon the other side. In a doubtful case, it would justify the jury in resolving the doubt against him."

That is the view the Court of Appeals took of his failing to account for his whereabouts at the time of the murder, and failing to account for his possession of the money.

Now, gentlemen, I am through with the examination of the facts in this case. I think I have shown you five different propositions, each of which is fully established, and each of which makes out the guilt of this defendant. In an ordinary case, of course, the defendant is presumed to be innocent, and the burden of proof is upon the prosecution to show his guilt; and we are required to show that beyond a probable or reasonable doubt. But the Court of Appeals say that if we show him about that place, or the property in his possession, he is called upon to account for

his money and account for his whereabouts at that time; and the jury would be justified, if he does not do it, in resolving that doubt against him, in a doubtful case.

I have endeavored to discharge my duty in this case with justice and fidelity; I have endeavored to lay before you the facts of the case; I have presented to you in its order the evidence upon which we shall rely. And now, when this case is submitted to you under the charge of the court, it will rest with you to discharge your duty in a manner that shall be satisfactory to your consciences. The question with which you have to do is not whether the defendant shall be punished or not, but whether he is guilty of this murder. The law takes care of the question of punishment after you have rendered your verdict. The manner in which this case has been conducted, and the manner in which it has been argued upon the part of the defendant has demonstrated—and the appeal made here to your sympathies in behalf of the father of the defendant must have made it evident—to your minds that the counsel for the defense have no idea of gaining an acquittal. They do not expect to turn back this tide of testimony; to arrest the sun in his course. They do not anticipate that GORDON can escape punishment; but they have labored to convince you that there is *some* doubt in this matter; some possible doubt as the counsel says, and then they hope that some one juror will do GORDON a favor, and that you may thereby be induced to say "murder in the second degree." They have hoped that they might get you to say that. And you will remember that the counsel closed his argument by suggesting that such a course on your part would be the best upon the whole. It would be a discredit to you; it would show that you are flinching from your duty, if you should for a single moment be disposed to modify a just verdict, to interfere and exercise your power without regard to your duty, and render a verdict in that form merely to modify the pnnishment of that man. The evidence shows that the man is guilty, not of murder in the second degree, but of murder in the highest degree ever

known anywhere on earth. Talk about murdering this man, and not intending to murder him! Have you any idea that when he went out there to rifle that man's pocket he intended simply to knock him down? He struck him a a blow that knocked the top of his head *off*. Does any one suppose that he did not mean to kill him, but only to stun him and rob him? Do you believe that he intended that THOMPSON should revive and bring him (GORDON) to justice? If he intended to rob the man merely, he might have taken some opportunity, as in his bedroom, to do that. But he takes him out there where there can be no mistake about it. You have the evidence that the blow was so violent as to knock off the whole top of the head. Can you say that there is a possibility of doubt, and that therefore you will modify your verdict? Can there be any ground for such action, can there be any mistake? None whatever. If a man is charged with murder, and upon circumstantial evidence, and is pressed to a speedy trial, there may be cases where he may be convicted without sufficient evidence. That has been so sometimes. But that is not by any possibility this case. Eighteen months have now elapsed since this charge was made. He has had time enough and aid enough. His father has come to his assistance. They have subpœnaed witnesses, and have given him every aid. But where is the defendant? Where is his explanation as to his whereabouts and his possession of the money? The only soul that speaks in reply is ALONZO CLARK. He does not give us any means to test the truth of his story, and he is contradicted by GORDON and by others.

These lines of evidence which we have considered, each of which is so strong by itself, are like the strands and fibres, which combined make the strong cable, and these united prove the guilt of this prisoner beyond a reasonable doubt, and such should be your verdict. Your verdict will be rendered, I believe, uninfluenced by passion, unmodified by sympathy. They would have you pity GORDON and his friends, but if you pity these have you no pity for THOMP-

son and his friends? They seem to have none. They, without evidence, accuse Thompson of being drunk. If the evidence produced in this case is true, some portion of the proceeds of the murder of Thompson, and his robbery, went into the hands of John Gordon, who sold those horses bought by his son. Thus, you perceive that by this strange coincidence Thompson's own money may be used to defend his murderer from a conviction at your hands. Thompson is reviled and misrepresented now that he has been murdered. Have you no sympathy with the poor, dead Thompson?

Gentlemen, this is not a question of sympathy, but of right; it is a question of vindicating the law of the land. As I said in the beginning, so I say in the conclusion, if it was Gordon only that was involved, I should be glad to have a mark put upon him, and let him go; but it is not Gordon alone. If juries can be found who will spare the guilty in rendering their verdict, if they can be made to yield because a man has committed so *great* a crime, has beguiled a fellow man to a secret place and slaughtered him, if then in view of the severity of the penalty due so great a crime, the jury can be found that will give to pity the place of justice, if a jury can be found who will under such circumstances modify their verdict, when the crime committed is no more murder in the second degree than it is horse stealing, what security is there for life, what respect for law? But I do not fear that. There is no room for a reasonable doubt of the guilt of this man. Take any branch of the case and follow it out and you find that it brings him in guilty. When you have examined this case, if you believe that George E. Gordon was guilty of murder, let your verdict be what it should be. Declare your verdict, and leave the man in the hands of the law to be dealt with in accordance with its provisions.